

PRIVATIZATION OF PUBLIC OPEN SPACE:
PUBLIC PROCESS AND PRIVATE INFLUENCE

by

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Submitted to the Department of
Urban Studies and Planning
in Partial Fulfillment of the Requirements
of the Degree of

DOCTOR OF PHILOSOPHY
IN
URBAN AND REGIONAL STUDIES

at the

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

October 1987

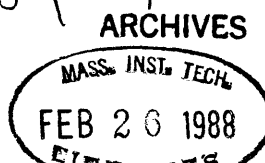
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On October 22, 1987 in partial fulfillment of the
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in Urban and Regional Studies

ABSTRACT

Privatization of public open space -- the private sector's taking over of the development and management of public parks -- is the latest form of private involvement in open space provision. In recent years, private intervention in open space development has been sought in order to utilize private resources to provide public services, which has resulted in a number of public-private partnerships. These efforts are clearly the result of a pragmatic cause, that is, the necessity to find an alternative to relieve the burden of the public sector in its increasing financial retrenchment.

Privatization, as an extreme variation of private involvement, produced considerable debate in its application. Functional issues such as management efficiency and effectiveness were questioned; issues concerned with the substantive effects on the quality of open space raised controversy; and ultimately, ideological questions relating to the proper role of a public authority and the legitimacy of a private authority in taking care of public open spaces were addressed. Control -- who is in control, what is to be controlled, how control is practiced, and on what grounds control is justified -- is a guiding issue that shapes concern over privatization.

This thesis examines the issue of control accompanying privatization along four parameters; design character, public access, public use and control authority. The focus of the enquiry was whether the private sector's extensive involvement influences decisions on these parameters in privatization cases, that is, how public values and private interests are accommodated in the privatization process. Four privatization examples were used as cases: Bryant Park in New York, Copley Square in Boston, Pioneer Courthouse Square in Portland, Oregon, and Pershing Square in Los Angeles.

The study shows that privatization cases adopt prudent procedural measures; public participation, on-going relationships between a public authority and a private organization, monitoring measures, and approval requirements are all critical to ensure the clear assignment of responsibilities between public and private. The private sector's function is one of producing services, the public role is ultimately of policy decision-making. However, the study also reveals that privatization cases accompany substantive changes of use, including the introduction of commercial uses within public park lands as well as private security enforcement and highly structured programming, which, when taken altogether, imprint a subtle yet obvious presence of control within design and operation of the public space. Privatization cases present that they are often effective on the basis of such substantial program changes.

Despite reasonable public concern over changes of use programs accompanying private management, the author argues that privatization of public open space is a viable option of open space provision which can be applied beyond the current condition of financial retrenchment of the public sector. The privatization of public open space should take into account pragmatic yet sensitive approaches in its application to deal with perceptually based negative public concern on privatization. The study concludes with several suggestions for making privatization of public open space effectively pursued in terms of the feasibility of privatization, the design of the privatization process and the establishment of institutional mechanisms.

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ACKNOWLEDGEMENTS

Planning process in America is a source of wonderment, especially to a foreigner's eyes. I have been constantly amazed by a complexity of institutional measures, a highly charged contention among interest groups, and the endless meetings and talks that are part of the process. I first become interested in the privatization process when I worked in the programming process for redesigning Copley Square in 1983, commissioned by the Copley Square Centennial Committee. Struck by an enormous interest, enthusiasm, and debate on redesigning this tiny parcel of land in Copley Square, I experienced directly broad issues that are addressed in the private involvement in traditionally public service. I found it worthwhile to disentangle a multitude of issues that are involved in public-private relationships in terms of how an institutional division shape use, design, and management of open space.

I am greatly indebted to my committee members who guided me through tackling this task. Each provided a unique perspective and encouragement. Julian Beinart always inspired me to look at the larger picture on social change and cultural change, even if at times I failed to understand until much later his enigmatic comments. John de Monchaux urged me to make a grounded and focused argument. I am grateful for his thorough comments and demanding questions to the last point of my work. Gary Hack, my thesis adviser, has been great, who always encouraged me to pursue what I really wanted to do and stimulated discussions with his insightful comments at appropriate stages of my research. I admire his belief in the learning process and appreciate his trust in my learning capacity. The inadequacies in the work are totally my own.

I owe to the people who work in the open space development projects that I used as case examples. I thank those people who allowed me to interview them and to use their materials: Daniel Biederman, Executive Director and Lorna Nowve, Associate Director of the Bryant Park Restoration Corporation, Molly O'Reilly, Executive Director of the Non-Profit Organization of Pioneer Courthouse Square, and people of the Pershing Square Management Association and the Copley Square Centennial Committee who provided me with relevant data. I acknowledge their pioneering efforts and innovative contribution to make open spaces in the city livable and enjoyable.

Writing at the end of the thesis-making process is a lonely task. I did most of my writing in the Laboratory of Architecture and Planning. Liveliness in the office kept my sanity and made me feel that I was still part of an on-going world. I thank especially Mary Dolden, former Research Associate of the Laboratory for her methodical editing.

I am deeply indebted to my parents for their quiet and wholehearted support. Their delight has been my pride and their sympathy has been encouragement to me. Finally my thanks to my immediate family, Hue, Haiwon and Jiwan, who shared with me frustrating and exciting moments during my stay at MIT and during my thesis-making. Hue has always been supportive and I appreciate his sometimes wry humor and pragmatic comments about this whole business of thesis writing, that made me bounce with more positive attitude. Thousand thanks to my eight-year-old Haiwon's wisdom, health, and optimism would not suffice. She shared all my hectic days at MIT and has been virtually a sounding board of all my experiences, although she never realized her immensely important role. Jiwan, my little one, almost two years old, gave me a final push to finish my work at MIT. I thank you all.

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"When a piece of work gets done in the world, who actually does it? Whose eyes and ears do the perceiving, whose cortex does the thinking, who has the feelings that motivate, the will that overcome obstacles? Certainly not the social environment; for a group is not an organism, but only a blind unconscious organization. Everything that gets done within a society is done by individuals."

Aldous Huxley

" If you have a private entity running a public park, who is to say that you and I might not be the undesirables next year?"

New York Times, May 15, 1983.

INTRODUCTION

PRIVATIZATION OF
PUBLIC OPEN SPACE

Growing Interest in Open Space Amenities

The demand for quality open spaces in urban areas has become ever stronger in recent years. According to a 1986 survey by the Mayor's office in New York, park maintenance was put at the top of the list of priorities among the 70 services provided by 22 city agencies, followed by police patrols, trash collection, and street cleaning. The survey represents the first time that a park service, rather than police patrols, was ranked as the most important public service. The survey illustrates that people are becoming more conscious of their parks and are demanding their improvement.¹

This growth in concern presents a marked contrast from the prevalent perception held until the 1970's. City parks had gradually deteriorated along with the decline of central cities: the accelerated suburbanization had left the center city largely void of middle class residents and with few attractive magnets to draw people in, except daytime workers. For example, by the late 1970's, only 26% of parks and playgrounds were reported to be in good condition in New York City.² The deteriorated condition afflicted all types of user groups: parks were viewed as too dirty and disgraceful by the elderly; as disreputable gathering spots to

¹ "Local Boards List City Parks as Top Concern", New York Times, April 27, 1986.

² New York Times, October 13, 1980.

the young; the middle class sought leisure outside city limits; parks were perceived as 'the oases of the poor'; and many people did not even complain, accepting the deteriorated condition as a way of life.

Indeed, the full swing from neglect to keen interest is evident in numerous developments and improvements of open space, ranging from restoration of large city parks, street revitalization, installation of small parks, greening of streets, and encouraging community gardens. The current situation is often said to parallel the great era of park building, almost a century ago. It has been coined as an era of the "rebuilding" of parks and open spaces.³ In this era of rebuilding, two significant trends are observed: One is the reshaping of the value of open space and the other is a shift of the delivery system from public to private.

Currently, open space development is increasingly driven by very immediate and practical purposes. It is often a tool of economic revitalization, image enhancement, and an exhibition of the quality of life. More encompassing purposes, such as structuring an orderly city, meeting ecological needs of a city, expressing civic pride in well designed parks are still addressed, yet they are played down. Instead, immediate and locally tuned goals including such items as combatting security problems or upgrading maintenance are addressed with greater vigor. The improvement of open space is

3 Ibid.

considered as the development of urban amenities: a means to strengthen a vital economic infrastructure (McNulty, 1985). Open space developments, often relatively small-scale, individually and locally initiated and implemented, reflect the needs of specifically concerned people. As this is the case, shift from public to private in the production of open space is natural. The private sector including businesses, community groups, civic associations, and non-profit organizations is increasingly involved in community development in order to meet their particular needs.

The diminished capacity of the public sector also contributes to the shift: municipal agencies related to park and recreation services have increasingly faced difficulties in the performance of their usual functions. Many cities have undergone a general financial retrenchment, peaked in the mid 1970's. Some states, having enacted tax-cut measures such as Massachusetts' Proposition 2 1/2% or Proposition 13 in California, have caused drastic budget reductions for park agencies.⁴

Several other reasons are attributable to park agencies' management problems. Park agencies have been caught by their own ambition: they have gradually incorporated more functions in order to keep up with perceived community demands and to cope with internal political pressures. Recreational facilities like swimming pools,

⁴ The financial retrenchment situation of park agencies in Boston and New York is presented in detail in Chapter 2.

hockey rinks, professional standard playing fields for night use, etc., which require sophisticated equipment and maintenance, put a considerable burden on park agencies. In addition, the concept of public recreation has expanded to include arts, crafts, cultural activities, and environmental education. Also, rising public expectation now includes not only use by conventional groups but also by groups needing specialized care -- the elderly and the handicapped. On top of this, "technological abuse" produces such problems as disposable bottles and cans, spray paints, fast food refuse, and xeroxed hand-outs -- all contributing factors to costly maintenance services.

Given this situation, public authorities have considered several routes to take: cutbacks of park and recreational services, transfer of responsibilities to other public departments, the introduction of commercial operations, and the solicitation of private support. For example, when New York City's 10-year park recovery plan in 1980 officially adopted a 'load shedding' plan, all these alternatives were incorporated into park management. These alternatives have been tried out with varying consequences. The cutting back of services, such as closing costly and underutilized recreational facilities has occurred in many cities, often resulting in severe public criticism at a time of heightened public expectation. Coordination among public agencies -- a recreational department and a school department, for example, -- often produces cost-effective services, which, however, are limited

in alleviating the fundamental functions of park authorities. Turning to the private sector provides greater potential benefit because of its wider range of applicability.

The shift from public to private support has not been possible without the growth in interest of the private sector in public affairs. Within the past two decades, not only have community groups sprung up, but business groups, a core group from the private sector, have increasingly been conscious of their public position, often called the "corporate social responsibility movement" (Getzels, et. al., 1975). Being aware that they could not isolate their enterprise from social and political controversies, they have increased the extent of their involvement in a broad range of urban affairs. There has also been a shift of emphasis from large-scale physical upgrading, much practiced in the urban renewal period, to relatively smaller scale projects that address local development issues. Business groups often set realistic and pragmatic goals comprised of their own business interests and public benefits. Procedural issues as well as substantive issues are addressed, incorporating the participation process and other mechanisms that bring support from the public.

In the general trend toward downtown revitalization, open space development is a particular match with business interests. The emphasis in the current economic development of downtown areas is directed toward strengthening service industries, calling for

quality environment and lively atmosphere. Image-making has gained a new popular currency in economic development. Toward this goal, private groups have endeavored to provide many types of amenities such as creating plazas, undertaking street improvements, sponsoring cultural institutions and facilities, and managing downtown malls.

Privatization of Public Open Space

Privatization -- the private sector's assumption of the development and management of public parks -- is the latest form of private initiative. Usually involving the redevelopment of urban parks -- relatively large open spaces that cover one or several city blocks in a central business district, privatization has recently been tried in several cities. Privatization usually takes the form of private groups adjacent to a particular public space initiating a process of redevelopment often by forming a private, non-profit organization. It prepares a development scheme, raises funds, carries out a development in conjunction with a public agency, and creates a not-for-profit management organization for the management of the public space.

This seemingly straightforward and laudable private action brings about debate on various issues. While change that improves the physical condition and provides a higher levels of maintenance are

considered obvious merits of private involvement, various issues are addressed regarding the private involvement at several levels. Most obvious, from a fiscal point of view, are the costs and benefits of the arrangement, the details of financing mechanisms, and the effectiveness of management. Substantive issues concerning open space quality are also addressed. Interest groups are divided not only by opinions relating to particular changes, but also according to general preferences and tastes regarding open space design and use. Objectives as well as terms and criteria to achieve certain objectives are not held in common among interest groups. Concrete objectives like security, vitality, users' convenience, and financial stability are usually expressed explicitly, often overriding other concerns such as openness and social interaction within public open space. Ultimately, the debate over private involvement in the management of public open space involves an ideological question, which raises identification of responsibility that is still to be assumed by the public sector, and the extent to which the private sector should take responsibility in providing public amenities, as well as defining the proper relationship between the two.

The critical issues surrounding the privatization of public open space go beyond how well a new delivery system operates to meet clearly defined goals: privatization presents a process in which the value and purpose of urban open space are redefined and reshaped within the changing relationship between public and

private sector. In the process, the public ideals attached to public space and the pragmatic realities of private approaches are tested out against each other, accommodating workable, agreeable decisions on various aspects of open space.

This thesis examines how this accommodation between public and private is taking place in the process of the privatization of public open space. A clarification of 'public' and 'private' by various parameters -- not only as political and economic divisions between governmental and non-governmental sectors but also as used in defining open space goals and values -- will be addressed throughout the thesis. The thesis will argue that there is a continuum between 'public' and 'private'; hardly a definite line, but a changing concept that is defined in a particular situation to deal with complex issues.

The thesis is structured in the following manner: Part I is a descriptive sketch of privatization as a phenomenon and Part II is an analytic discussion of key aspects of open space. Part I is organized to locate privatization as a service delivery system in the general context of open space provision and to draw up specific issues that are raised in the privatization process. In part I, chapter 1 examines the distinction of public/private in a delivery system of open space, identifying particular characteristics of privatization in comparison to other forms of private involvement. Private involvement in different forms, having always been a part

of the history of open space, has evolved into an arrangement that enhances stability, continuity, and control; in the course of time the concept of private involvement has expanded to incorporate a third sector. Chapter 2 illustrates the range of controversial issues brought about by privatization, through looking at the development process of two cases -- Bryant Park in New York and Copley Square in Boston. The two cases, presented together, provide a breadth of issues associated with private intervention.

Part II examines four key parameters of open space development -- design character, public access, public use, and control authority -- in terms of how the process and mechanisms of privatization influence each aspect. A brief introduction will place specific issues of privatization along each parameter. The guiding question in Chapter 3 is: In what ways do private sponsors exert influence over design decisions with their involvement in the programming and planning process? It is generally assumed that private sponsors' voices are likely to be strong in advocating their particular preferences and tastes. This chapter will present two points: Major design decisions in privatization are directed by a "balancing" approach representing public concerns and popular values, which reflects democratic planning in conjunction with an elaborate public participation process; and yet subtle design decisions are still influenced by private sponsors through a complex decision-making structure.

Chapter 4 and 5 grapple with a critical question of public use versus privatized use, each dealing with ordinary use and programmed use. In Chapter 5, it will be argued that many concerns over private, as opposed to public, use as a result of privatization are shaped by rather idealized notions of public space and that limited public access is usually associated with any public space. The control systems built in privatized spaces will be reviewed in terms of how they deal with local circumstances and how they shape design, programming, and security control.

Chapter 5 deals with programmed use of open space, integral part of private management of public open space. The focus of the discussion is how much discretion a private management organization has in controlling programmed activities and how such discretion is practiced. This chapter will turn to a legal definition of public use in order to locate privatized public spaces within a general definition of public space. It will be shown that the discretion of a private management organization is large, supported by its capacity for initiating its own event programs, although rules and regulations of public use employed in the private management are in accordance to principles of public regulations.

Chapter 8 examines the question of whether private management is really necessary and if so, in what ways it is effective. The relative merits of private management and public management of public open space will be discussed. Variations of management

organization among the cases described will be compared, along with the relative financial independence of the private management organization. Furthermore, concern over the loss of ultimate public authority will be discussed with an examination of measures that ensure the on-going relationship between public agencies and private management organizations.

On the basis of the examination of the immediate issues raised by privatization in Part II, the concluding chapter will expand to an interpretive discussion. General recommendations will be made for future instances of privatization including observations on the potential for and problems of a wider application of privatization. It will also address the general implications of privatization in terms of the cultural and ideological issues the privatization of public open space raises. Questions discussed include whether privatization is simply a response to a passing calling for the mobilization of private resources, or a process that will remain a durable part of an open space delivery system.

This thesis is concerned with locating privatization as phenomenon within a changing system of open space provision. Four examples are used as prime cases for an analysis of the effects of privatization: Bryant Park in New York, Copley Square in Boston, Pioneer Courthouse Square in Portland, Oregon, and Pershing Square in Los Angeles. The analysis of these cases are not strictly parallel. Each of the four cases is in a different stage of

implementation: Pioneer Courthouse Square is in full operation. Bryant Park is in partial operation with a plan for capital improvements. Copley Square is expecting to start reconstruction with most of capital improvement fund raised, and Pershing Square is involved in fund-raising and design development. The emphasis of this thesis is, therefore, speculative: it concentrates on the possible effects of privatization and the meaning of these efforts within the changing context of public open space, rather than presenting an ordered evaluation of privatization against pre-defined goals and criteria. Other cases, current and historical, which shed light on issues of privatization are also cited as useful precedents and references.

PART I

**PRIVATE INTERVENTION IN PUBLIC OPEN SPACE:
FORMS AND ISSUES**

Chapter 1

Forms of Private Involvement in Open Space Provision: Evolution and the Current Status

The American park tradition is distinctively a product of public power -- its spending capacity, its organizational skills as well as its legislative power. Park service was one of a few urban services that the government started providing in the course of expanding its functions. It was the creation of large-scale parks in the 19th century, a result of massive public works, that shaped an American tradition of public parks, departing from the European models that had influenced park-making previously. Prevailing expectations of the public responsibility to provide and maintain urban parks is indebted to the strong public presence during the genesis of the American park tradition.

Since the last century, a delivery system of parks has developed to incorporate more private involvement. This development reflects changes in several factors -- the capacity of park-related public agencies, shifting priorities in public spending, different needs for open space in various stages of urban growth, citizen

awareness, as well as the growth and diversification of the private sector. Over the course of this development, broader meanings and functions have been given to urban parks and open space and more elaborate and specialized forms of private involvement have emerged.

Four organizational models for open space provision can be identified according to the role of the public sector:¹

- I. The public sector as producer, the private sector as supporter,
- II. The private sector as producer, the public sector as facilitator/regulator,
- III. The community as producer/provider, and
- IV. Private/public sectors as joint producers/providers.

Created to respond to changing needs at different times, each model has a particular philosophy and ideology regarding the responsibilities of a public authority and the private sector's contribution to public welfare, as well as the relationship between the two. Each of these organizational models have developed over

¹ Following distinction is made among four functions related to service delivery -- providing, producing, facilitating/regulating, and supporting:

-- Providing is a policy function, deciding that something shall be done, regarding the level of service and the mechanisms for financing and implementation of a particular service; -- Producing means actual 'doing', i.e., building, managing, operating a particular service. Public character of a service is not changed regardless who actually produce the service. (These two concepts are drawn from Ted Kolderie's definition on alternative service delivery approaches, in his article in Public Management, October 1982); -- Supporting is distinguished by its temporary or one-shot character. This function involves with organizational, financial, and operational supports; -- Facilitating/regulating: Regulating is one part of policy function, yet is exercised with more definite mechanisms like zoning code. Facilitating involves more with initiating and accelerating development process.

time, and are currently utilized.

The pattern of evolution is dialectic. To start with, public and private sectors, representing the conventional split between governmental and business, alternately took on major roles in open space production, which is suggested in the first two models. Then a third sector -- non-governmental and not-for-profit -- emerged, exhibiting an exemplary form of open space production. Finally, as we currently see, traditional public and private sectors merge and work jointly with a third-sector organization as a vehicle for development. In the following section, four forms of private involvement will be described in terms of the basic principles and assumptions of each form, problems and issues in application, and variations in application in recent years. The comparison of these models is presented in Table 1.

I. The Public Sector as Producer and the Private as Supporter

As open spaces are considered vital to enhance public health, to motivate social enlightenment, and to nurture cultural development, their delivery is primarily the responsibility of governments, acting as the public agent; Nevertheless, private contribution to this endeavor signifies admirable philanthropy and a public spirit of private citizens. These two attitudes, as complements to one another, lay the ground for this arrangement. Being the oldest and most conventional model, it is still utilized most frequently.

Table 1. Organizational Models for Open Space Provision

Public/private relationship	Conventional Applications	New Public/Private Partnership as Variation of Each Model: Arrays of Activity
Distinction of Roles		
Model I: Public as a Producer/ Private as a Supporter	<ul style="list-style-type: none"> — large-scale parks — civic spaces 	<ul style="list-style-type: none"> — Coordination of fund-raising — Coordination of activity programming — Coordination of volunteer programs
Model II: Private as a Producer/ Public as a Facilitator/regulator	<ul style="list-style-type: none"> — office plazas — arcades, through block pedestrian ways, skyways 	<ul style="list-style-type: none"> — Partnership in retail development — Commercial operation of park facilities
Model III: Community as a Provider/producer	<ul style="list-style-type: none"> — historic community land ownership — home owners association 	<ul style="list-style-type: none"> — link with local associations — Neighborhood land trust
Model IV Public/Private as a Joint Producer/Provider		<ul style="list-style-type: none"> — Adopt-a-park programs — Downtown management association — Privatization

Clearly, this model grew out of the efforts of the 19th century, notably the park movement. The leading role of government was not only ideologically based but also practically justified as a result of significant public intervention necessary in the creation of large-scale parks. Public spending and the private sector's supplementary support coexisted rather naturally at the time, even though the distinction between public and private had not been clearly drawn.

Typically, private support exists in three forms: organizational and political support, financial support, and operational support. Organizational and political support is often provided by the social and economic elite with considerable power and influence. Especially in the early period of park history, the philosophical leadership represented by private citizens with enlightened ideals and public-minded purposes, played a key role in catalyzing governments' flourishing creation of urban parks; they influenced political decisions by exploiting their social positions or public reputations. Financial support usually takes two forms: a donation of land is made either for purely altruistic reasons or to avoid taxes through land transfers and the donation of funds. While land provision and the construction of basic park facilities are furnished largely through public spending, private financial support, voluntary or solicited, is generally directed to building

extra amenities.² In many cases private contributions are earmarked for specific purposes, notably building particular facilities of recreational or cultural use, fountains, sculptures, etc. The funds, being aimed at attracting publicity, are poured into such works that create an immediate visible improvement and exhibit a permanent presence. Finally, operational support comes in the form of sponsoring events or providing maintenance resources on an ad-hoc basis. Private group involvement includes private citizens, civic associations, garden clubs, community associations, and business corporations. Generally, private citizens and civic groups tend to be involved with political support, community associations and business corporations with operational support, and business corporations with financial support.

Some problems are inherent to this arrangement. Private involvement is usually one-shot and sporadic, and thus, is hardly accountable for normal budgeting and administration purposes. This is especially true in the case of financial support, where little support besides that earmarked for initial capital improvements is directed toward management and long term maintenance. Political

² Andrew Jackson Downing, an early proponent of landscape gardening in the United States, felt that the people of the United States should appeal to public liberality:

"... make it praiseworthy and laudable for wealthy men to make bequests of land ... for this public enjoyment, and commemorate the public spirit of such men by a statue or a beautiful marble vase, with an inscription, telling all succeeding generations to whom they are indebted for the beauty and enjoyment that constitutes the chief attraction of the town." "Andrew Jackson Downing, Father of American Parks," Park International, July 1920, p 48, requoted from Cranz (1982), p 160.

support also is often mobilized either at an initial development stage or at a critical period of capital improvement. Further, continuity of operational support is largely contingent upon the willingness of sponsors and volunteers.

A foremost task in utilizing this model is, then, how to solicit more private support effectively and on a continuing basis. Two directions in this effort are notable: One has been to establish an institutional mechanism that makes the private sector share the financial obligation, and, the other is to establish organizational channels within public agencies to coordinate private support functions.

A prime example of instituting financial mechanisms is the concept of a special assessment district, i.e., in the case where property owners and residents are levied a special tax for the purpose of open space improvement. In fact, the use of such special assessments is a revival of a long standing mechanism. New York City, for example, used special assessment laws to cover the land acquisition cost of Central Park by assessing taxes against abutting properties (Doell, 1973, pp283-286). The application of this concept had declined to almost nothing by the early 1970's, largely due to the absence of the condition that makes the mechanism possible: During a period of rapid urban expansion, a rise in real estate values readily takes place so that acquisition or development of parks can occur before nearby private properties

are developed, with a marked influence in improving an area. This condition simply did not exist in a period of stabilized urban development. And the recent reintroduction of this mechanism, in conservation or historic preservation districts and in selected cases of commercial development, reflects a resurgence for development.

Despite an effectiveness of a special assessment concept in raising private funds as well as in legitimizing the principle of 'he who benefits, pays,' its implementation has enormous operational difficulties. Some involve drawing up the boundary of a district, establishing the standards for levying taxes, obtaining the residents' consent required in most states, etc. These difficulties have hindered widespread application, resulting in few applications to public parks.³

Other systematic efforts to encourage private support have recently been pursued. Unlike conventional efforts seeking private support on a contingency basis, a concerted and continuous effort is emphasized. For example, in 1980 New York City's Department of

³ Despite the fact that special assessment concept is basically based on soliciting private support, it is not an exclusive part of the first model. This method is often used as a supplementary financing mechanism in other models of public/private partnership, when there is a specific agenda that attract private groups' interests often involving significant capital improvement. Improvement of downtown shopping streets is one typical use now. Bryant Park in New York, one of core cases of this thesis, has employed the method under the Business Improvement District concept.

Parks and Recreation adopted a policy, called "load shedding" as a part of a 10-year park recovery plan. It recommends radical changes of the department's role, defining it as one of manager: That is the department coordinates and oversees various projects run by private groups and concessionaires. Three key efforts make up the new policy: turning over facilities formerly run by the Department to private business,⁴ establishing a more systematic fund-raising effort, and working with locally based non-profit groups. The Central Park Conservancy presents a notable example of a systematic fund-raising effort: The Parks Department encouraged two citizen groups -- the Central Park Task Force and the Central Park Community Fund -- to be consolidated into the Central Park Conservancy and positioned a special administrator for Central Park within the Department in order to link the Department and the Conservancy.⁵ This effort experienced such phenomenal success in raising funds and enhancing environmental awareness that it has been emulated in other city parks, e.g., Prospect Park, New York.

Coordinating activities between public agencies and locally based voluntary organizations is popular. Nowadays many urban parks, especially those of historical significance, are supported by

⁴ Among these programs, commercial operation of recreation facilities fit the second model of private involvement.

⁵ A fund-raising strategy of the Conservancy is innovatively systematic: A catalogue listed all needed improvements and maintenance projects with cost estimates, and donations were solicited from individuals and corporate sponsors. "Central Park Renaissance", Elizabeth Barlow, New York Magazine, June 6, 1983.

voluntary organizations. Ordinarily, these voluntary organizations provide services such as sponsoring events or voluntary work forces for maintenance outside the usual administration of park agencies. In a new endeavor, a concerted effort for establishing continuous cooperation between the two organizations has been pursued. The Five Parks League in New York, a citizen group with concerns for the preservation and upgrading of five historic parks in New York -- Washington, Stuvevant, Madison, Union and Tomkins,⁶ and the Friends of Public Garden in Boston are prominent examples.⁷

Coordinating city-wide cultural activities is another variation of a concerted effort between public and private. Boston's "Summerthing", a city-wide arts and theater program, and Seattle's "Out-to-Lunch" program, providing cultural and entertainment events during lunch-hours in city parks, are examples of the effort. Usually the coordinating function is assumed by city governments which solicit private sponsors and volunteers.

A fundamental characteristic of new variations on the first model is that the public sector is at the core of decision-making, while overseeing all production of services supplemented by private organizations. No doubt, sponsors' wishes are often imperative in making decisions, but their influence is, however, screened in a

⁶ Daily News, March 16, 1984.

⁷ These organizations organize and sponsor events, raise funds, address maintenance problems, and suggest improvement to city agencies.

public process tuned into the framework of public administration. Thus, the public authority is essentially accountable for whatever consequences.

II. The Private Sector as Producer and the Public Sector as Facilitator/regulator

Despite that the economic benefits of open space development, particularly in increased property values, has long been argued by park advocates, the benefit is generally regarded as indirect and minimal in comparison to other income-producing uses.⁸ The private sector's reluctance to develop open spaces is natural, especially in areas where land value and development potential for other use is high. To cope with this situation, the public sector turns to regulatory tools to encourage private provision of public open space. Incentive zoning, pioneered in 1961 zoning in New York, is a typical example of this approach. It has produced more than 70 open spaces of various kinds including plazas, arcades, covered

⁸ There have been few efforts to measure the economic value of a park. One notable exception is Clawson and Knetich's study, in Economics of Outdoor Recreation, they presented a method of drawing theoretical use values by plotting numbers of visitors against dollars per visit. This method is often used in measuring the economic impact on local economy in the vicinity of county, state, or federal parks. Nevertheless, the social and usage values are more recognized. A sentiment prevails that: "The true value of open space includes just seeing a park, particularly of the attributes of the smell of horticultural life and their worth as windbreakers, air purifiers, the comforting feelings of merely knowing parks are available, and the effect of parks on civic pride and prestige; these are matters which are outside the scope of economic evaluation," (Doell, 1973, P 287)

pedestrian spaces, and mid-block throughways, etc. in the city.

A key issue in this model is the control of the ramifications attributed to private actions, once the profit-seeking sector actually produces open space services. These include such concerns as the aggregate impact of individual private actions, quality control, and performance monitoring. The evolution of incentive zoning exemplifies this problem. The aggregate impact of incentive zoning has occurred in several instances. Excessive production of office space, beyond possible market absorption, has resulted from individual developers' exploitation of the policy (Kayden, 1978). An increase in building density and building bulk jeopardizes the environmental quality of a newly created open space by blocking sunlight or creating a harsh winds. Disruption of a distinct street wall by the placement of discontinuous islands of highrise buildings in the "open sea of plazas" is labelled as a serious urban design problem (Ramati, 1982). Many early plazas drew criticism of quality because of a lack of amenities and inappropriate design. The long-term enforcement issues relating to public access and the maintenance of privately owned spaces pose a monitoring problem, and incidences of poor maintenance, fencing-off, and the temporary closing of such spaces have often been reported in office plazas.⁹

⁹ Daily News in New York City reported the problem in a series of articles in October, 1981. An article of Oct., 5, 1981 pointed out that the city's Building Department was unable to strictly police the zoning regulation because of manpower cuts, leaving many problems uncorrected. One of the most blatant cases was the Grace

New measures for the quality control of open spaces have been introduced, while a restructuring of the incentive zoning system has mitigated some larger planning and design issues by lowering maximum FAR or specifying design regulations for buildings¹⁰. Quality-specific regulations and guidelines are a notable example (Whyte, 1981): Performance standards for amenities have been added to open space zoning to make pre-evaluation and post-monitoring effective; categories of amenities are specified in detail both for mandatory requirements and for voluntary items. New means to mitigate the public access control problem have been devised: for example, mandatory signs to be posted that announce the hours of operation along with name and number of the owner who is responsible for park maintenance or requiring a performance bond to be purchased by the owner to cover the maintenance cost of landscape features.¹¹

Recent variations on the model, exemplified in public/private

Building near Bryant Park which closed the plaza without an approval by the Department. The case stirred much controversy from the public: charging that the public has been 'ripped off', the then Manhattan Borough President threatened to sue the owners either for the original monetary value of their bonus space or for the current value which was estimated \$ 2-3 million per year (Daily News, October, 22, 1981).

¹⁰ "Midtown Development," Department of City Planning, New York City and "Midtown Zoning," New York City Planning Commission, 1982.

¹¹ "Plazas for People," the City of New York, 1976.

partnerships in downtown development, aim at facilitating well-designed development rather than regulating the quality of development through more shared decisions and responsibilities.¹² Several changes brought about a proliferation of the concept: growing public concerns for environmental quality, consumers' heightened expectations for amenities and image, and, in parallel, business groups' placing of high priority on amenity development. A change in the direction of federal programs facilitated the shift: Major funding programs for capital improvement, e.g., Urban Development Grants, Urban Mass Transportation Authority's Urban Initiatives, CARD required strong support from the business community for granting funds.¹³ The creation of new kinds of public open spaces has often been attributed to these public/private partnership within commercial developments. These new spaces include indoor or outdoor retail spaces adorned with visually attractive, high-quality physical amenities, accentuated by festive cultural events.

The private operation of public recreational facilities within urban parks is another recent application of the public/private partnership. Since this arrangement usually involves run-down

¹² A changing public/private relationship is elaborately explained in "Downtown Shopping Malls and The New Public-Private Strategy," Frieden, Bernard J. and Lynne B. Sagalyn.

¹³ "A Merchant Association For Downtown Crossing," Boston Redevelopment Authority, 1980.

facilities. private operators are often given some incentives.¹⁴ Once turned over, private operation has often proved to be more effective than public operation, with marked physical improvement and performance effectiveness.¹⁵

Control and public access are still persistent issues of these variations of private involvement. Many questions are raised concerning the extent to which the public sector could ensure the publicness of privately provided spaces and the balance that should be made between levels of public access and improved amenities. Improvement of downtown streets by merchant associations also poses similar questions of who controls and on what basis; determining the proper balance between effective management and a secure "public" character is a challenging task within a profit-seeking private operation.

III. The Community as Producer/Provider

The distinction between public and private in the two models

¹⁴ The agreement to turn over the city's zoos to the New York Zoological Society was reached only after the department agreed to spend \$ 21 million to rehabilitate them, which was planned to be collected through reduction of maintenance costs for some years (New York Times, October 15, 1980).

¹⁵ For example, Central Park's Wollman Memorial Skating Rink, under private operation, is a big success: The number of users was increased from 94,600 to 134,044 and gate receipts went from \$ 95,000 to \$ 236,116, between 1979 and 1980, making the rink a self-supporting operation (New York Times, March 26, 1981).

explained above is a traditional one: Public represents government and private, non-government. While the private sector in the second model explicitly represents the business sector, "private" in the first model means, rather, the non-governmental sector in general, including individual citizens and various civic associations, usually of high social standing. In the third model of open space provision, a third sector organization -- non-governmental, not-for-profit, and of a voluntary grass-roots nature takes on a key role. This model is different from the first model, which also incorporates a third-sector organization, in that in this case, non-profit organizations actually own and operate open spaces. As pointed out by S. B. Warner, "the political force of the efforts does not rest upon philanthropy but springs from a new kind of local politics that grew out of the civic rights movement, and it emphasizes self-help and insists on the dignity of all participants."¹⁶

Applications of this model have grown by way of the voluntary improvement of open space by individual citizens during the urban renewal period. Historically, neighborhood parks have had a lower priority than other public parks in the allocation of public funds. Many local and neighborhood parks suffered from a lack of public improvement throughout an urban crisis period. Crime-ridden, abandoned, and dirty open spaces symbolized the

¹⁶ S.B. Warner Jr., "Land and Dignity," The Boston Globe, March 1, 1987.

decaying image of neighborhoods in the inner city. Grass-roots efforts sprang up in an effort to counteract this circumstance. Local residents initiated the improvement of underutilized neighborhood parks, using pieces of vacant properties, or common spaces in multi-family housing projects for their own uses; gardening, play spaces, or simply green space. Success of early improvement projects was followed by widespread applications in inner city neighborhoods, instituted in part to protect them from gentrification pressure.

Built upon grass-roots participation, this form of private involvement faces several critical tasks to overcome the inherent weaknesses of voluntarism: securing permanency of use of land, establishing a stable organization for a long-term commitment, effectively using technical assistance, and locating a funding source for capital improvement. Advocates for community space recommended several actions aimed at long-term stability. These include, 1) incorporating community open space as a land use category separate from traditional open space and recreation in planning and zoning regulations, 2) awarding tax incentives, 3) the active use of bond acts and Community Development Block Grants by local communities, 4) founding a nation-wide organization (to which the American Community Gardening Association has responded), and 5) setting aside a portion of public lands and parks for community use (Francis, 1984). Although full realization of these recommendations faces many hurdles, some public support has been

gained including financing support for community open space capital improvement from city and state funds and the leasing of public land.

A significant follow-up to voluntary community improvement is the emergence of non-profit organizations that provide neighborhood groups with technical assistance and the formation of an information network of funding possibilities. City-wide organizations like the Park Council and the Green Guerrillas in New York City, for example, have been active in handling these matters. Another step further is the formation of the neighborhood land trust, which institutes permanent community ownership fostered by such nation-wide organizations as the Trust of Public Lands (Stein, 1979).

A historical precedent of this model provides the source for a rhetorical metaphor as well as a mechanisms for operation: The 'communal ownership' of common land, most prominently evidenced in the Village Green in New England towns, is often referenced. In this arrangement, a formally organized group of residents serves as legal owners of common land and they share decisions on determining use, as well as carry out maintenance. This tradition had been diminished as the communal ownership had changed to either public ownership or to private owners to be developed for other uses. Land trusts or owners' associations in residential neighborhoods are trying to revive the communal ownership in an effort to

institute an effective mechanism to provide local residents a structure and a process to own an open space on a cooperative basis.¹⁷

Community open space provision has a component of self-interest and parochialism, often overlooked in admiration of community initiatives. A sense of control is encouraged to provide involved people a symbolic reward as well as to direct the voluntarism into more organized and skilled management. In some cases, this sense of control is carried over to protectionism, resulting in access control: Unlimited public visual appeal provided by the improvement notwithstanding, community spaces are often used exclusively by the group involved in developing and managing the site, offering only limited public access (Francis, 1984).

IV. Public/Private Sectors as Joint Producers/Providers

The model of public and private sectors as joint producer/providers presents a hybrid form of open space provision, representing a combination of the three models explained above, rather than a completely new invention. It is devised to improve the perceived

¹⁷ Flemming's book, On Community Ground: Caring for Shared Land from Town Common to Urban Park, Cambridge: The Harvard Common Press, Inc., 1982, explicitly addresses community proprietorship rooted in Village Greens as a source of inspiration of modern proprietorship: this book describes a modern extension of the tradition in such categories of multi-family housing estates, corporate-sponsored parks, and privately provided parks.

drawbacks of previous models: the uncertainty in relying on private support for long-term planning, development, and operation of open space because of private support's unpredictability, the controversial issues of control involved in for-profit private operation, and the impermanency and lack of expertise often associated with community involvement. At the same time, this model takes working ideas and benefits from the other three models. The philosophical grounds underlying the three models are all represented: in simplistic terms, philanthropic motives, balancing self-interest and public benefit, as well as nurturing participation and proprietorship. Many operative tools are also borrowed from other models.

Numerous variations exist in the application of this model, which is differentiated by degrees of private intervention. A modest variation is one in which a private group assumes some of the maintenance functions of public open space. One good example is the Adopt-A-Park program in Boston, in which the Parks Department delegates maintenance work to corporate abutters. In a case of Angel Memorial Park in Post Office Square, owners of abutting properties have formed a not-for-profit association.¹⁸ Other cases such as the Statler Office Park, Dewey Square, and Waterfront Park

¹⁸ The structure and function of the Post Office Square Park Associates is simple: four corporate groups make up the Associates, one of which allocates staff for routine maintenance like trash collection, lawn maintenance, and cleaning. A straightforward operation is possible partly because the area itself is small (7,500 square feet) and its use is not complicated.

are each taken care of by a single corporate sponsor. The arrangement between public and private is straightforward because of the simple function of maintenance.

Management associations for downtown retail streets represent a more complex type of private involvement, often including not only maintenance but also operation of public events and improvements. Many examples and variations exist. The Denver Partnership in downtown Denver, for instance, assumes major tasks such as the management of a downtown transit mall, its promotion, and public improvements and development.¹⁹ In another version, the Downtown Crossing Association in Boston supplements functions that the public government does not effectively perform such as vending operation, management, promotion, and event programming.

Finally, the privatization of public parks has emerged, applying the concept of public/private as a joint producer into public parks. Several examples are Bryant Park in New York City, Copley Square in Boston, Pershing Square in Los Angeles, and Pioneer Courthouse Square in Portland, Oregon, all prime cases of this thesis. This form of public/private partnership presents several characteristics which, when combined, make this form distinct from other conventional models. First, private involvement is on-going: financially, organizationally, and operationally. In many cases, a

¹⁹ Managing Downtown Public Spaces, Project for Public Spaces, Inc., Chicago: APA Press, 1984, pp 60-61.

development initiative comes from the private sector and a formal arrangement with related public agencies later comes into being in order to formalize a way of assigning specific responsibilities between public and private, both in development and management.

Second, a not-for-profit organization is often created outside the public agencies and business communities, to undertake a combination of functions such as planning, development, fund-raising, maintenance, and operation. This arrangement is preferred since it allows a certain detachment from the usual politics involved when the development process is carried out by the private sector as well as enabling participation by various interest groups within a single organizational framework.

Third, private financing plays a vital part in raising the total funds needed for capital improvement. In many cases, the development could not have been implemented without private funding, and the commitment of private funds is often used to request public grants. Various ways of soliciting private funds are employed: lump-sum contributions by major business corporations, selling out capital facilities, and grass-roots fund-raising efforts.

Fourth, attention is given to securing long-term financial stability of management and operation, again relying heavily on private financing. Various mechanisms are explored: the

establishment of a special tax assessment district, furnishing of maintenance endowment funds, and/or introduction of revenue-generating uses within the open space. Each strategy carries with it particular issues and problems for implementation.

This model for the provision of open space, combining conventional models in a new context, takes a pragmatic stance and employs innovative tools. As comprehensive as they are, it also addresses wider and more complex issues concerned with open space quality and governance. In the following chapter, an in-depth look at issues of this new model will be examined using two cases: Bryant Park in New York and Copley Square in Boston. Debates on the utility, effectiveness, and legitimacy of these two cases will be presented along with specific details of the development process.

Chapter 2. Privatization Process of Two Cases: Bryant Park and Copley Square

This chapter will present the range of issues associated with the privatization of two open space cases: Bryant Park in New York City, and Copley Square in Boston. The two cases differ in their processes of development as well as in the mechanisms used for privatization. Accordingly, each case generated different issues and problems. The purpose of this chapter is to illustrate how issues were raised and articulated as the development process evolved, and the planning and development will be traced in order of following process: historical background, project initiation, progress of planning and resultant issues, and status of implementation.

Bryant Park and Copley Square share a similar locational contexts. Located in the business district, they are surrounded by office, commercial, and institutional buildings (both, interestingly enough, being adjacent to public libraries). Bryant Park occupies a nine-acre block between 42nd street, Fifth Avenue, 40th Street, and the Avenue of the Americas, located in New York City's prime midtown area. The New York Public Library is located on one side of the park, under a 99-year lease with the city. (The actual size

of the park is 4.5 acres, excluding the Library site.) Copley Square is located in Boston's Back Bay, an area which is experiencing increasing development pressure to accommodate business growth. It occupies a 2.5 acre block located between Boylston, St. James, Clarendon, and Dartmouth Streets, with historic Trinity Church bordering the park's west side, and the library on the east.

Both privatization cases are in active implementation. Although the entire redevelopment scheme has not yet been implemented, Bryant Park is currently being managed by a private, non-profit organization. Its relandscaping work is planned to start on November, 1987. Ground-breaking for Copley Square redevelopment has recently been made, after nearly 5 years of planning.

2-1. Background

Historical background

The histories of Bryant Park and Copley Square illustrate the successive transformations of open space designs made according to the changing situations of their urban surroundings. Frequent and repetitive changes have been made, rather than incremental transformations, revealing just how susceptible open spaces within business districts are to the fluctuation of business levels and the vagaries of real estate development.

The history of each space goes back to the 19th century. The Bryant Park site, after having been acquired by the City in 1822 was the site for many uses. It was potter's field in the 1830's, in 1842 the Croton Reservoir was built on it, with half the block left vacant and strewn with rocks, deep pits, and the relics of shanties.¹ The Crystal Palace, built for an international exhibition of industry sat on the block in 1853, and marked one of the park's glorious times. In 1884 the park was officially named Bryant Park, after orator and poet William Cullen Bryant who had worked to establish Central Park, and it was refurbished with winding walkways and an informally-shaped central lawn. The Copley Square site, once consisted of two triangular blocks bisected by a major street, was the result of the clash of two separate street grid systems. Trinity Church was built in one of the two blocks in 1868 and the remaining area was officially named Copley Square in 1883. Since its official designation, Copley Square has been the site of many civic events, public meetings, and even victory gardens during the two World Wars.

The urban development situations in New York and Boston at the time each of the spaces was created, were remarkably similar, despite the half century of difference in timing. Both parks were developed when the surrounding commercial area was expanding. By the 1920's, New York City's development was expanding toward uptown, resulting in the conversion of brownstone residential

¹ Daily news, May 30, 1982.

buildings of the midtown district to commercial use, and 42nd Street was at that point flourishing as a theatre and entertainment district. During urban renewal in the 1960's, Boston's development started to move westward, changing the surroundings of Copley Square. Also in common was the strong public administration that existed in both cities: The Parks Department of New York City was headed by the ambitious and influential Commissioner Robert Moses and the Boston Redevelopment Authority (BRA) engineered urban renewal in Boston.

The original conditions of both spaces were eliciting serious criticism. An influx of undesirable street activities from the 42nd Street exacerbated the already deteriorating physical condition of Bryant Park; Copley Square was only marginally used, and often encroached upon by parking. In addition to criticism from general users, civic and business associations were strongly calling for improvement. They offered financial assistance as well as a planning work: The Fifth Avenue Association in New York, an established business group, even provided a design of their own. Despite various input from private groups, it was the public sector that initiated redevelopment and implementation. The Parks Department in New York and the Boston Redevelopment Authority in Boston each directed an open design competition. Lusby Simpson's scheme was chosen for Bryant Park from 102 entries and Hideo Sasaki's scheme for Copley Square from 188 entries.

The influences of the prevailing design philosophies is evident in the selection of each of the winning designs. The Beaux-Arts style of Bryant Park represents the then flourishing classical design in architecture and landscape, in fact, features such as symmetry, central open spaces, and tree canopies as presented in the winning design were found in many previous design proposals for the park. Nevertheless, two features of the winning scheme for Bryant Park are clearly the product of political influence. The rigid formality achieved by creating a central lawn without pedestrian cut-through and by placing geometrically patterned plantings was a reflection of Commissioner Moses' taste for grandeur and monumentality. The park was raised four feet above street level, with the intent of separating the park from its surroundings, a feature that was criticized even at the time.² Similarly, the design of Copley Square was influenced by the popular open space design ideas of the 1960's, emphasizing the spatial quality of an open space in relation to surrounding architectures over the physical quality of the park as a place for human activities. Architectonic shapes and geometric compositions were strongly

² The New Yorker commented on the features in September 15, 1934 that "It looks as though the Union Square system of park-building -- raising everything 4' in the air -- is now established custom. Bryant Park has also been raised, like a yeasty loaf. We were gazing at it yesterday and wishing the architects had left it on street level, where it was. Parks, when you elevate them do not become impressive, like a Roxy orchestra. Instead, they become more like a closet shelf: you don't care what's up there, because you don't feel like standing on a chair to find out. ... They are too stagey. And they disappoint people passing in the street, who expect to see tree shadows, but only see the tops of men's hats."

represented in the winning design, which was praised as being "remarkable for the way it draws the disparate buildings around the square into a unified spatial conception."³ Copley Square too was separated from the street -- about 4' below street level.

Problems readdressed

The hope, popularity, and momentum that accompanied new development were short-lived in both Bryant Park and Copley Square. As initial enthusiasm withered after development, so did the condition of both spaces. Persistent social problems impinged again: their designs were not resilient enough to incorporate emerging needs; adequate attention was not given to management; and despair, ill-fame, and lack-of-control took over both spaces.

Bryant Park was experiencing particularly serious problems. It had been patronized by unpleasant visitors that accompanied the general decline of 42nd Street; the unemployed in the 1930's, muggers in the 1960's, and drug dealers, alcoholics, and drug users since the 1970's. Serious crimes including murder, rape, and mugging took place quite often and graffiti, broken facilities, litter, and piled rubbish were everywhere. In the 1970's, drug dealing was so conspicuous in the park, it made the park "a place of

³ Architectural Forum, October 1970: pp 60-63.

intimidation."⁴ both real and perceived.

In comparison to Bryant Park, Copley Square suffered less from crime, though drug dealing was often reported. The problem of the square were focused in misuse and poor maintenance condition, creating a public area out of context with the outstanding physical quality of surrounding architecture, described as follows:

"It lay there -- a plastic profanity -- on the entry steps to H. H. Richardson's world-acclaimed Trinity Church. How else can one describe the sight of an empty Pepsibottle propped up within a yellowish Styrofoam fast-food container -- a sort of grotesque still life -- on the church's otherwise deserted steps. Had the rest of Copley Square not been such a totally disgraceful trash heap, one might have laughed it off as sick humor or anti-clerical pop art. But the dull concrete-paved square was thick with discarded cans and bottles, brown paperbags, paper cups, cigarette stubs and dog crap. Three young girls were furtively smoking pot behind some pillars fronting the church. Winos were sprawled over several benches, some sipping from upturned brown bags. Trash barrels were overflowing, and cars parked on the square marred the perspective of the church. There wasn't a blade of grass left on the Boylston street side of the square, just packed-down, litter-impacted dirt. Men were begging from anyone crossing the square and "exchanges" were being negotiated in secluded spots."⁵

The physical features peculiar to both spaces were attributed by design critics to aggravate the problems. The separation from the surrounding streets -- elevated Bryant Park and sunken Copley Square -- were particular targets of criticism. An inadequate relationship to a prominent public building located inside each of the spaces was considered problematic. Particularly in Bryant

⁴ Bryant Park: Intimidation or Recreation, Project for Public Spaces, Inc. 1981.

⁵ The Boston Globe, September 20, 1982.

Park, the Library building turns its back to the park, without physical access, a situation deemed detrimental to the creation of a positive relationship between the Library and the park.

The 1981 evaluation of the existing condition of Bryant Park performed by Projects for Public Spaces, pointed out that the design was problematic in terms of security. The overall layout of Bryant Park did not allow unobstructed views of the whole park except from the back terrace of the Library, which was only minimally used. Alleys along the periphery defined by rows of tall trees, bushes, and benches aggravated the safety problem with their dead-end corners. The spaces under the trees, intended to be cozy and relaxing places were found to be hiding places for derelicts and drug dealers. Symmetrically located entry points to the park did not reflect the different intensities of activity on surrounding streets.

If Bryant Park suffered security problems due to its park-like setting with abundant trees and bushes, Copley Square met criticism of exactly the opposite character; too few softening features were included in the square's design. A lack of places to relax, a barren look created by dull, hard-surfaced pavement, and an image of a pedestrian thoroughway were complaints often made by users.

Bryant Park serves as an example of how once-admired design, shaped according to the classic notion of parks as symbols of public order

and grandeur. has declined because of its inability to adapt to changing needs and situations. Copley Square illustrates that a design that emphasized spatial quality in tune with popular design paradigms of the urban renewal period, was criticized as public aspirations demanded places for human activities. By the early 1980's, public criticism of the existing conditions of both spaces had accrued to the point where change was demanded.

2-2. Project Initiation

Conditions of management

In contrast to the strong public initiatives that directed earlier developments of Bryant Park and Copley Square, the city governments of the 1970's were experiencing increasing financial retrenchment. The notorious 1975 fiscal crisis of New York City and Proposition 2 1/2, the 1980 tax law imposed in Massachusetts, put park authorities in both cities in a particularly difficult position, since budget allocations for park services are usually in a line behind that of other more urgent services such as police, fire, sanitation, and schools. In both cities park authorities suffered from enormous budget cuts.

In Boston, budget of the Department of Parks and Recreation, as of 1983, was 7 million dollars, equal to that of 1973. Proposition

2 1/2 had reduced the annual budget by 60% in 1981, from \$9.2 million to \$3.6 million dollars. The staff was reduced from 787 in 1980 to 260 in 1983, and the department closed 8 of the 16 neighborhood buildings and eliminated the aquatics and tree divisions.⁶ Copley Square suffered as other Boston parks did. Its operating budget remained at its 1973 level of 75,000 dollars including overhead costs. This break down to about 50 cents per square feet, a budget barely enough for day-to-day maintenance and far short of any capital improvement project or the programming of outdoor events.

The New York Parks Department had been in organizational turmoil as well as experiencing financial problems. Since Commissioner Robert Moses stepped down in 1960, after governing for three decades, the Department had eight commissioners until Gordon J. Davis took office in 1978. The changing focus of management, coupled with an ever decreasing operating budget, has produced ineffective and inefficient management of the Department. In 1980, the department's work force consisted of 1,779 permanent employees and a revolving crew of 1,458 workers, compared with 6,000 permanent employees in 1960.⁷ The number was far below internal estimates of the 4,500 full-time work forces required to keep up with maintenance chores. The operating budget of the department has

⁶ Commissioner McCoy's remarks made on September 14, 1983, on the public forum organized by the Copley Square Centennial Committee.

⁷ New York Times, October 13, 1980.

increased since 1979, reaching \$111 million in 1982 from \$79 million in 1978, but the increase represents dollars spent towards paying workers no longer funded by CETA programs. One promising sign is indicated by allocations of funding for capital improvement projects which has steadily risen from 1979, \$8 million to \$90 million in 1983, indicating considerable investment in rebuilding of the city's parks.⁸ In 1978, \$230,000 had been allocated for the maintenance of Bryant Park, which covered only basic services such as garbage pick-up, tree trimming, and clean-up. The amount was far short of adequate; the BPRC estimated budget in 1983 was at least \$ 500,000 for maintenance alone.

Initiation of development

In contrast to the public sector's declining fiscal situation, business had become flourishing around the two spaces since the 1970's. Bryant Park's immediate surroundings include over 5 million square feet of office space and 64 ground-floor retail spaces; several high-rise buildings including the Grace building, the Telephone building, and Republic National Bank were built under incentive zoning. Also, upon reaching the 1980s, the Copley Square area accommodated a new 2.4 million square foot mixed use project, Copley Place, in addition to the Hancock tower, built in the 1970s, and with more buildings expected along Boylston Street which faces.

⁸ Daily News, July 11, 1983.

Copley Square's northern boundary.

In the context of change, the redevelopment of each of the spaces came as a result of the efforts of a neighboring property owner. By the late 1970's, the New York Public Library, which had often been criticized for its lack of commitment to taking care of Bryant Park, was increasingly faced with the negative effects of the park's notorious reputation on fund-raising of the Library. Using funds from the Rockefeller Brothers Fund and the Henry Luce Foundation, the Library founded the Bryant Park Restoration Corporation (BPRC) in 1980 in order to improve the condition of the park. The BPRC started hard-line restoration work by hiring a privately-financed maintenance crew: removing graffiti, trimming bushes and trees, restoring run-down turf of the central lawn, and removing trash. They also provided outdoor events such as art exhibitions, music programs, ticketron, and food vendors. The BPRC improved the park, physically and security-wise. The public perception of the park was positively transformed and the use rate was increased, while the crime rate was impressively reduced, as seen in the table below.

BRYANT PARK CRIME STATISTICS							
	Complaints						
	1979	1980	1981	1982	1983	1984	1985
Homicide					1		1
Robbery	133	89	107	37	56	43	41
Rape	5	6	6	1	3	3	2
Felony Assault	11	5	2	7	9	11	11
Grand Larceny	<u>22</u>	<u>35</u>	<u>32</u>	<u>17</u>	<u>27</u>	<u>29</u>	<u>26</u>
Total "Serious Crimes"	171	135	147	62	96	86	81
Criminal Sale of Controlled Substance	179	570	424	285	503	344	242
Criminal Possession of Controlled Substance	<u>53</u>	<u>126</u>	<u>148</u>	<u>61</u>	<u>104</u>	<u>122</u>	<u>102</u>
Total Drug Arrests	232	696	572	346	607	466	344

(Source: The BPRC
Annual Report 1984 - 1985)

The redevelopment of Copley Square was initiated by abutting businesses. The Hancock Insurance Company, in fact, made an agreement with the City, when they built the Hancock tower, to tear down the Old Hancock building two blocks from the square and to turn it into an open space in order to lessen the Hancock tower's environmental impact on the area. They later decided that the old Hancock building lent itself to rehabilitation and requested the City to release them from the agreement. Alternative compensation was sought through Hancock's assistance in the redevelopment of Copley Square. The developer of Copley Place, a new \$450 million office/retail/hotel complex, also expressed a desire to upgrade the square. In conjunction with another insurance company, New England Life, which was planning to build a new headquarters building in a nearby block, they founded the Copley Square Centennial Committee (CSCC) in order to launch the redevelopment of the square.

Planning process

The planning processes contrast in each case. Conventional planning, in the case of Bryant Park, was carried out by the BPRC, to be reviewed through public process for approval. Copley Square adopted a participatory planning process, in which interest groups' opinions were incorporated in the development of agreeable working plans. The different planning processes are reflected in different organizational structures; the corporate structure of Bryant Park

pursued efficient progress in redevelopment and the committee structure in Copley Square functioned in an advisory role.

The BPRC, after two years of operation, expanded its planning function in order to draw up a long-range management plan in 1983, with endorsements from both the Parks Department and the Public Library. The BPRC hired consulting teams to conduct the evaluation and the renovation scheme of park. The plan, unveiled in 1983, was to go through a public approval process in which several organizations and public agencies were involved, including the Community Board, the City Planning Commission, the Board of Estimates, the Landmarks Preservation Commission, and the Art Commission.

The CSCC was organized to encompass a wide range of constituencies including public agencies (the BRA and the Department of Parks and Recreation Department), business groups and abutting property owners, abutting public institutions (the Boston Public Library and Trinity Church were the two most prominent), civic associations, neighborhood associations, and related professional communities, in all, a group of 32 members. The task of the committee was to make recommendations for the design competition's program, to draw up a management scheme, and to raise funds for redevelopment. The committee was structured to allow discussion of a range of open space development issues and to incorporate public participation into the planning process. Four subcommittees were formed, each

focusing on management, design, activities, and financing; public forums were organized to present the committees' work for general users' response.

2-3. Planning Progress and Emerging Issues

Bryant Park

The BPRC drew up improvement strategies in a straightforward manner. Acknowledging that the basic characteristic of the park is its function as a relaxing "sanctuary" from crowded surroundings, and offering natural features such as fully grown trees and a central lawn which is well used during warm seasons, the BPRC defined its critical task as the reclamation of the space from the outlaws, derelicts, and indigents, making the park safe and preserving the park's basic character. The commitment to this task is clearly represented in three principles that were repeatedly stressed by the BPRC: "Good uses crowd out bad uses, a well-kept space attracts legitimate visitors and a run-down facility encourages vandalism and lawlessness, and police efforts alone cannot make the park safe."⁹

A comprehensive restoration scheme was proposed in 1983, made up of four components: 1) an arrangement that enables the BPRC to lease

⁹ The BPRC Annual reports: 1982, 1983, 1984-1985.

the entire park from the City for a 35-year-period with the possibility of a 15-year-extension functioning as a single management entity which assumes all maintenance, operations, administration of concessions, and provision of security forces and public events; 2) the installation of a cafe/restaurant to facilitate continuous, active use of the park throughout evenings and weekends; 3) establishment of a Business Improvement District (BID), which would include 29 properties fronting the block occupied by Bryant Park and the Public Library, from which income would be placed directly in BPRC funds, and 4) a redesigned landscaping plan.

The rationales for the plan were based on pragmatic grounds. A well established organization, functioning as a prime care-taker, would arguably play an effective mediating role between the public sector and general users. This was stated as "the Parks Department has simply too many programs in their hands to provide a care tended for a specific public space."¹⁰ Furthermore, the necessary continuity of service was felt to be more secure in the presence of a responsible management organization. Indeed, prior to the BPRC, there had been efforts made to improve the park's condition and to enliven it by way of public events, particularly by the Park Council, a citywide privately-funded organization concerned with the improvement of open spaces. The efforts, however, had been too

¹⁰ Daily News August 9, 1982. Executive Director of the BPRC, D Biederman's remark.

disjointed and marginal to tackle the persistent security problems and to overcome the park's tenacious negative image.¹¹ Securing management funds through establishment of a revenue-generating use was argued as critically necessary considering the limitations of public funding. According to a 1983 plan, the developer/operator of a restaurant would contribute \$2 million toward the improvement of the park and the restaurant would generate \$500,000 a year for management funds. These amounts were well above the fund amount committed by the City, \$1 million for relandscaping and \$250,000 a year for maintenance and operating expenses for the first 5 years of BPRC operation. The Business Improvement District, once implemented, would provide about \$410,000 a year for park operation. All together, the operating budget was set around \$1,160,000. (Refer to Table 5 in chapter 6.) A rearrangement of landscape features was prepared for easier park maintenance and policing, including three key features: reduction of the number of entry points, relocation of the Lowell fountain to the front of the library's west terrace, and rearrangement of a dead-end alley to provide more pedestrian cut-through.

The proposed plan, as it was unveiled to the public, stirred controversy. A forefront of debate was the commercial use included in a public park. The proposed restaurant was indeed a bold scheme by any standard: put together by would-be developer/operator Lloyd

¹¹ "Up from smoke: A New Improved Bryant Park?" D. Biederman and A. R. Nager, New York Affairs, Vol 6, No 4, 1981: 00 97-105.

Warner, it presented a two-story glass pavilion to be added to the back side of the Library building. The scale of the restaurant was to accommodate 1,000 indoor seats in a 14,000 square-foot restaurant as well as 4,000 moveable outdoor seats, with the restaurant sub-leased to the operator. Conservative park advocates, who traditionally oppose any commercial operation in parkland furiously rejected the proposal; moderate groups, who basically favored some kind of restaurant function in the park were ambivalent about the magnitude of the proposal; and the proposal was opposed by the Landmarks Preservation Commission, as it required a change in the facade of the Library, a landmark building. Another associated issue was the proposed lease arrangement which included the entire park. This was criticized as an unnecessary arrangement that would remove the public status of parkland, even though the lease was necessary for the building of commercial facility.

Private influence on the change of Bryant Park's design character was suspect for good reason. The restaurant proposal, in combination with the proposed relocation of the Lowell fountain to the front of the restaurant and a newly added reflecting pool certainly evoked the negative notion that Bryant Park was to become a landscape rearranged in favor of commercial use¹². Despite claims by the developer and the BPRC that the restaurant would

¹² New York Times, December 1, 1983. "The 'New' Bryant Park: A Plan of Pros and Cons," Paul Goldberger.

provide moderately-priced food without intimidating atmosphere. the proposed features, such as location of major entries to the restaurant only from the street, as well as the secrecy of the deal between the BPRC and the developer contradicted such claims. intensifying public concern over the impact of the proposed restaurant on public use of the park.

Furthermore, fundamental issues were raised in regard to exclusive management by the BPRC. The BPRC was to perform more than the usual functions of the Parks Department. Included in its responsibilities were capital improvement, maintenance, operation of events, provision of security, the selection and supervision of concessionaires (although the concession leases are made directly with the City). Furthermore, the BPRC was allowed a large degree of financial independence in the use of revenues from the BID and concessions. Naturally, the legitimacy of the BPRC's exclusive role as the park's sole management entity was questioned. Park preservation groups, notably the Park Council which had worked also for the improvement of Bryant Park, spearheaded the opposition to privatization. They argued for the public sector's commitment as prime care-taker of parks in defense of public interests: "What's wrong with this is that it is privatization of a public park. Parks are belong to the people of the City of New York and it is the Parks Department who should be their care-taker."¹³

¹³ New York Times, May 16, 1983. Park advocate, Barbara Fife's comment.

Concerns over the loss of public control, as well as over too much private control, were also a part of the opponents' argument. Privatization was viewed as a diminishing of the public sector's power over park governance: "Taking public land, removing it from the protection of public park status, and turning it over to a private entity, it will be very difficult over the years to establish the public interest or use of the property."¹⁴ The BPRC's assumption of such operational functions as permit administration of public events was viewed to give too much control to a private organization. The president of the Park Council captured the negative perceptions regarding the accountability of the private organization aptly: "If you have a private entity running a public park, who is to say that you and I might not be the undesirables next year?"¹⁵

As illustrated in following comments, general users were divided in their opinions on the question of whether Bryant Park should be leased to a private concern for the construction of a restaurant:

"While I am sure the restaurant would be a success, it won't clean up the park and return it to the public. The same park users would be there in the part that remained for the public."
(Secretary)

"If the park land that's left remains public, the problems will persist. The city wants to lease the park for 35 years, but if the lessee restricts the park to his customers, will it benefit the public?" (Computer programmer)

¹⁴ New York Times, May 16, 1983. This is a comment by president of the Park Council, Peter A. A. Berle.

¹⁵ Ibid.

"The park has declined so much that anything that's done would be an improvement. The only safe time to go to the park is when there is a concert. Lunch hour is safe because of the crowds and the police stationed here." (Legal secretary)

"The restaurant would return the use of the park to the general public. The proposed restaurant should charge moderate prices so the average person can afford to there to eat." (Account executive)

"I do not see why not, as long as the public benefits. However, it depends on how much park land is used for the restaurant. I would not want most land taken, with little left for the public." (Legal secretary)

"Yes, because this park has been taken over by junkies and dope peddlers. Anything that might return Bryant Park to the public is better than its present condition. A restaurant would drive out the undesirables." (Account executive)¹⁶

Copley Square

In contrast to Bryant Park, where considerable public debate took place after the BPRC proposed a specific plan, the CSCC incorporated deliberation within its programming process, thus being saving arduous public debate. Nevertheless, as the committee's work progressed, there emerged obvious contention over the character of the square. Since the redesign of Copley Square provided an opportunity to take a completely new look at its proper role, a broad range of possibilities were brought into the committee's discussion. Suggestions ranged from a complete "greening" of the square with grass, trees, and flowers to creating

¹⁶ Daily News, August 29, 1983. The interview was done in Bryant Park.

a public gathering place with facilities to encourage active use such as cultural performances, vendors, a farmers' market, an information booth, a skating rink, and with no exception, a cafe/restaurant. The central focus of the CSCC debate became the choice between an active versus a passive image of the square, along with accommodation of a restaurant, similar to that in the Bryant Park case. A decision on the restaurant function was considered particularly critical, since such use might dominate the relatively small two-acre square, creating an incompatible relationship with Trinity Church, the national landmark building located on the square.

The division between the two contrasting characters of the square were incidentally represented by two sub-committees of the CSCC. The activities sub-committee, consisted of advocates for programmed activities to lend vitality and active use to the square and the design sub-committee was made up largely of horticulturalists and preservationists. Contrasting images of the square were portrayed by each proponent: the square activated by many eye-catching and mind-absorbing activities and the square as a respite, distinguished from the booming surrounding business activity. Those who favored active use argued for a pragmatic awareness of hard social realities: security, maintenance, and proper funding, as well as the city's needs for cultural activities. Proponents for passive use argued that practicalities of active use should not provide an excuse for the commercialization of public space and

degrading the outstanding architectural quality of the square's surrounding buildings.

The design competition was held in 1984 using design guidelines that incorporated both the park advocates' wishes and the activity advocates' agenda. The guidelines proposed a negotiated cafe scheme consisting of a modest food kiosk with an outdoor seating, which would be installed only during the warmer seasons. The competition called for a design that related the square in harmony with the richness of its surrounding architecture, achieving a balanced mixture of park-like character, and facilities for eating and public events within a dignified and contemplative setting.

The issue of a permanent versus a temporary structure for food service was a persistent issue even after the competition was complete. Some members of the activities subcommittee and representative of business communities once again pressed for a change from the a temporary food kiosk to a permanent operation, expressing concern that a temporary structure would deteriorate after a few years to become a blight on the park. Representatives of the neighborhood associations continued to oppose the idea on the grounds that the aesthetics of the square should not be sacrificed to commercial interests.¹⁷

Unlike the BPRC, which provided a management plan along with the

¹⁷ The Boston Tab, January 14, 1986.

redevelopment scheme, the CSCC, having focused on preparing the competition program, moved rather slowly in fund-raising and decisions on the management structure for the square. The construction costs necessary to realize the winning scheme turned out to require more than the original estimate: \$4 million, rather than the \$3 million target. As of the spring of 1987, the CSCC had raised funds from grants from state funds, contributions from major corporations, contributions from abutting properties and civic associations, and by grass-roots fund-raising efforts.

The CSCC considered two management structure options. In the first, the Department of Parks and Recreation would continue maintenance of the square including day-to-day cleaning, repairs, landscaping, tree-trimming, and lawn mowing and a new management organization would be established to provide operational functions including programming activities, scheduling, issuance of permits, activity promotion and fund-raising. In the second scheme a single management entity assumes all management responsibilities, and an administrator from the Department of Parks and Recreation would be assigned to the management organization to oversee maintenance of the square. The latter scheme gained more support as of 1987.

In contrast to Bryant Park, the proposed management scheme for Copley Square did not raise much concern for several reasons. The central focus of the square's redevelopment was design development and fund-raising, and the management scheme was not particularly

associated with the design development process. Even more critical was the fact that the CSCC tried to raise the maintenance endowment of \$1.5 million as part of the fund-raising for capital improvement costs. Also because revenue-generating commercial use was kept to minimum, there appeared to be less concern over private management's role.

2-4. Implementation

In both cases implementation of the proposed plans of both cases has been delayed, since the year when planning was actively pursued, 1983. This has been due to Bryant Park's lengthy public review process, in the case of Copley Square, fund-raising difficulties.

The BPRC proposal has gone through several changes. After months of negotiation, the original lease plan, in which the entire park was to be leased, was revised. A new lease arrangement, named the "Terrace Agreement," provided that the BPRC would lease only a portion of the west terrace of the Library as the site for the proposed restaurant. The landscaping plan has also been changed, keeping the Lowell fountain as it stands and increasing the number of entry points, reflecting public opposition to the original proposals.

Two other components of the proposed BPRC plan that required legal provisions have been approved. (Refer to Table 2.) The state legislature approved the establishment of the BID and the Terrace Agreement. The BID proposal was well received by abutting property owners, signed by 80% of those included, and came into effect in June, 1986. (According to the New York State Law, the establishment of a BID requires an endorsement by 50% of the adjacent property owners.) The lease of the upper terrace was finally approved by all required public review agencies in June of 1985. The BPRC was officially authorized to manage Bryant Park as an agent of the City of New York and the lease and management agreement were signed by the New York Public Library, the Park Commissioner, and the Mayor in July of 1987.

Table 2. The Proposed plan of the BPRC:
Status of Public Approval as of January 1987

Components of the BPRC plan subject to public review	Parks Dept.	City Planning Commis- sion	Communi- ty Board 5	Board of Estimates	Landmark Commis- sion	Art Commis- sion	State Legis- lature
Management Agreement	000						
BID Proposal		000	000	000			000
Terrace Agreement	000	000	000	000			000
A plan of restaurant	000		RRR		XXX	000	
A change of landscape	000		RRR		RRR	000	

000 Approval required & obtained
RRR Review Required & approved
XXX Review required and denied

In the meantime, the restaurant proposal, the most controversial component of the plan, has changed considerably. In 1986, frustrated by a four-year-long public process and with grim prospects for approval of the scheme proposed, the developer/operator withdrew the plan, stating that "the process has so many hands in it that it is terribly hard to do without being reduced to mediocrity."¹⁸ The most recent proposal consists of two smaller cafe/restaurants to be built on the same site, which will be constructed by the BPRC and operated by private concessionaires selected by the BPRC. However, the implementation of the restaurant(s) is still uncertain. The Art Commission approved the relandscaping plan, independent from the restaurant plan; the Landmarks Preservation Commission, although its approval is not legally binding, is still firm about its position that any structure blocking the west facade of the Library is untenable. The BPRC, having acquired legally required approvals for building a restaurant, is now planning to solicit concessionaires in 1987.

The CSCC has undergone some changes. It is currently being shaped into a type of civic organization, incorporating private citizens to join the committee as individual members. After construction of the square is complete, the committee will exist as an organization consisting of concerned citizens, who will act as a support group for fund-raising and promotion of activities/events when the need arises but will assume no specific management functions.

¹⁸ New York Times, April 25, 1986.

PART II

**EFFECTS OF PRIVATE INTERVENTION
ON OPEN SPACE QUALITY**

Introduction to Part II

Framework for Discussion

In Part I, distinct characteristics of privatization were presented in comparison to other forms of open space provision and the development process of two cases was documented to illustrate the privatization process and issues associated with it. Privatization does not pose completely new issues but raises issues which traditionally have been addressed in open space development and management, and redefined in relation to a changing delivery system. Part II will discuss how this redefinition takes place by examining ways that specific cases deal with issues of privatization in design and management decision-making. In order to present an overall picture of the fundamental issues of each dimension, this introduction places issues of privatization along four key dimensions of open space development and management. The four dimensions are; design character, public access, public use, and control authority. The first three are concerned with the more immediate quality of open space use, the last focuses on the effectiveness of open space management.

One thing must be clearly understood before further discussion. The magnitude and comprehensiveness of the debate over privatization, exemplified in the cases described in this thesis, may not be universally associated with other types of private intervention. The intensity of the debate, in some cases, is attributed to situational causes: An intense degree of private intervention in an open space with a definite boundary, often of great historic importance and of a symbolic presence, challenges existing perceptions and expectations about public space.¹ It must also be mentioned that the cases of privatization described in this thesis differ, depending upon the local development context as well as the given design problem.

One trait common to the nature of this debate is that the concept of privatization as a service delivery system, in which the division between public and private is institutional, tends to be transformed to fall under a broader meaning of the term, 'privatization'. In these instances, sociological meaning is attached to the redefinition, often with normative judgment: That is, privatization is equaled with "the growth of the private sector at the expense of the public", or phrased differently, the pursuit of the qualities associated with private space is made at the

¹ Coping with an existing perception about service delivery is one of the critical issues in implementing privatization. According to a recent survey about alternatives of public service delivery, newly installed public services are most likely to be successful through a private service delivery other than the public service routes originally provided by public agencies.

expense of those of public space. The debate is thus often loaded with reactions based on perceptual differences.

With this general definition of the privatization of public open space, generic issues accompanying each dimension, and how privatization reshapes these issues towards particular foci are presented in the following:

Design Character is concerned with how a particular open space responds to the needs and character of locational context. Setting the design character is often influenced by a subjective interpretation of contextual needs, more than by objective analysis of the physical or social characteristics of the context. The concept of how open space has to function within a contextual setting powerfully shapes the formulation of its design character. Since the concept is likely to vary according to the wishes, norms, values, and tastes of individuals, the identification of those individuals who are given decision-making authority is always an issue. Because this is so, the planning process, in which various and sometimes diverse expectations are represented and hammered into specific physical features is critical. A prevailing image of the design character of open space also plays an important role in shaping design character.

Because of private groups' heavy involvement in the development process of privatization cases, their influence on determining the

design character is naturally suspect. However, private influence in these cases is different from usual private development in that privatization employs a 'democratic' planning process in one form or another in drawing up the programmatic requirements for open space design. Conflicting ideas are addressed in the process, particularly around two substantive issues -- choosing between or balancing an active and a passive design character and whether or not to accommodate a commercial function (cafe/restaurant) within a permanent structure. The fundamental question underlying these issues becomes one of the new role that downtown open space should play within a context that is increasingly dominated by corporate residents with their business, work, and entertainment-oriented culture. Furthermore, corporate sponsors' influence in shaping the design statement for open spaces emerges as a relevant issue.

Public Access² is concerned with how easily an open space is physically, perceptually, and operationally accessible to public. If it is easy to address this issue, a definition of user clientele and the accessibility of public space is however often cloudy. Does 'public' mean virtually everyone, regardless of age, socio-economic status, sex, or other attributes? Does 'good'

² Public access and public use are dealt with separately in this thesis. Although they are both concerned with the 'publicness' of open space, they are differentiated in the following way: public access deals with users as individuals and their ordinary, not specified, day-to-day use; public use deals with group activities including programmed events and organized activities which often require a use permit or other arrangements. This distinction is useful since group activities increasingly play a vital part in open space.

accessibility require open space to be always open? Or are some limitations needed and justifiable according to specific circumstances? If so, what control tools are to be used and in what manner? How can such pressing and real concerns such as security and ease of maintenance be taken into account? All these questions require an operative definition of public access that reflects the situation as well as a relative and flexible concept of "publicness", with fundamental principles taken into consideration.

Since the current development of open space is concerned not merely with how to rebuild the physical fabric but also with how to redefine the social identity of open spaces, public access naturally becomes a critical issue. Conventional problems, such as dealing with undesirable activities and maintenance are explicitly addressed. Subtle issues of the class implications in public open spaces that are under private operation present themselves -- especially when the operation of a restaurant is concerned. Typically, an idealistic notion of public access and a more realistic view of public access are in contention in discussions of privatization. Often neutralized, at least on the surface, the differences in intent suggest critical imperatives in decisions relating to detailed management and operations.

Public Use is concerned with the free public expression and assembly warranted by fundamental civil rights: It involves

decisions on the types of group activities and programs allowed encouraged, or discouraged within an open space. Regardless of the differentiation of public spaces by specialized function, such as civic, commercial, or recreational, the practice of public expression and free assembly is an issue common to all public spaces. Despite the simplicity of principle, actual practice is subject to changes in the customs, norms, and values of a society and its institutions. Public space often provides the arena where the principle of free expression, expressed in varying intentions and perspectives, is tested.

Along with the shift of management from public to private, much consideration is needed towards securing the exercise of fundamental rights in public spaces under private operation. The private sector's discretion in programming actual use and operation, which is the basis of its authority, requires a careful weighing of immediate private discretion and ultimate public authority. Furthermore, the expanded programming capacity of a private management organization over time poses new concerns. These include the private sector's inclusion of programs with particular contents, scheduling, and frequency which may affect the quality of the open space, however temporal, and the fairness of these procedures through which these programs are selected and operated under private management.

Finally, Control Authority refers to the procedural issues of open

space management. Related issues are the cost efficiency of a particular decision-making structure in management, in relation to the financing structure; the appropriateness of an arrangement to the fairness of decisions relating to the needs and preferences of the individuals and groups who are to be served; and the soundness of implementation mechanisms for long-term stability. Collective decision-making structures, procedures for evaluating various actions, and financing mechanisms are issues of concern.

Privatization poses fundamental questions regarding control authority. One is the legitimacy of the private operation in view of existing regulations concerning with park governance. Pertinent to immediate concerns, the effectiveness of private operation, no doubt, is put in question. The financing structure should be sufficiently sound to justify private operation, lessening the burden for public management; the decision-making structure should provide reasonable procedures for taking into account public concerns. A privatization requires the careful balance of maintaining ultimate authority in the public's hand and awarding the power necessary for effective day-to-day management to private hands.

The following chapters will discuss each of these key dimensions by elaborating on fundamental issues in a broader context of open space development and management and analyzing the resolution of particular issues in cases of privatization.

Chapter 3

Design Character: An Interpretive Issue

"The park should, as far as possible, complement the town. Openness is the one thing you cannot get in buildings... What we want to gain is tranquility and rest to the mind."

Frederic Law Olmsted,
Public Parks and The Enlargement of Towns

"Eat, Drink, and Be Merry."

William H. Whyte
"Small Space is Beautiful"

Private involvement in the development process of open space and in shaping the design character of the open space, has proceeded in an interesting fashion. While relying heavily upon private sponsorship for development, the forces of privatization have employed a 'democratic' process of one form or another in drawing up the programmatic elements for open space design. Naturally, conflicting ideas must be considered in programming. Most evident are two substantive issues that have been raised during the process: the choice to be made or the balance struck between active

or passive overall design character, and the accommodation of a permanent structure to house commercial uses. Furthermore, the influence of involved private groups in finalizing the design has also been suspect. How to resolve contentious issues and the limiting of sponsor's dictates within the decision-making process, are by no means issues peculiar to open space development under the privatization process. These issues have, however, intensified in case of privatization.

This chapter aims to clarify the framing of issues in a particular circumstance of privatization and to explain patterns of and concerns over private influence. The first section of this chapter will locate the current debate within the larger perspective. The current debate can be understood as a continuing search for an appropriate design paradigm for urban open space, and its roots can be found in a historical context. Remaining sections will discuss the programmatic vision in relation to a definition of clientele, the incorporation of commercial use, and the design statement of each case, respectively.

3-1. The Functions and Form of Open Space: Urban Space vs. Park

A consistent design paradigm has been lacking for open spaces in American cities. Attitudes have swung back and forth between the

two prominent open space traditions -- park and urban space.¹ The public park tradition, a genuine invention of the enlightened 19th century American mind, has certainly been a cherished ideal type of open space. Nevertheless, the tradition has not provided a very workable paradigm for open spaces within dense urban settings, which tend to be relatively small, easily accessible, and surrounded by day-to-day urban activity. On the other hand, the urban space tradition, however powerfully it works in an original European setting, has offered only fragmented precedents and often, limited applicability in the context of American cities.

Each tradition contains certain ideas about the relationship between city and open space, the role of open space, design and use features. The park tradition is strongly associated with the contrast between man and nature, cultural and social ideals which transcend an everyday reality of the harsh urban environment, the celebration of natural features, parsimonious use of artificial features including buildings, a puristic attitude toward activity other than relaxation and recreation, as well as an emphasis on public function, excluding private (commercial) use. On the other hand, the urban space tradition regards open space as an immediate extension of urban features, a functional part of city life, and a place where the human exchange taking place is closely linked to

¹ The competition of Pioneer Courthouse Square made the distinction most explicitly as "park" and "square": "A park being organic in design, a square functioning as an integral part of the urban retail core." The Jurors' report of Pioneer Courthouse Square, 1983.

other urban functions.

The separation between the two traditions in American open space stems largely from the historical development of urban parks in American cities. The tradition of park has dominated over that of open space in the history of American cities.² Matched with the needs for control of urban expansion during industrialization, the park tradition was nurtured because it offered an easily implementable and working land use concept for managing urban growth through the creation of large-scale parks. Its wide popularity was due to its appeal to American's sentiment toward nature. Coinciding with growing expansion of public power, the paternalistic character of the park tradition gained support from those in power. Associated with such goals as public enlightenment, democratic ideals, and the expression of a civilized society, the park tradition provided a powerful paradigm to foster esteem in the American mind. The park tradition was so powerful that subsequent park developments -- pleasure grounds, reform parks, and recreational facilities -- have harbored many of the landscape ideas held by the park tradition. Despite differences in terms of physical and functional features and social goals, common features can be found among park types. They are often the product of large-scale public intervention and the resulting landscape often

² In The Politics of Park Design(1982), G. Cranz, discussing the historical transformation of American parks, proposed the pleasure ground as an archetype of the American park tradition, acknowledging other colonial parks to be rooted more in the European urban tradition.

includes recreation facilities distributed in the midst of a "natural" setting.

Under the overpowering shadow of park tradition, an urban space tradition transplanted from European countries into America's colonial cities was largely disrupted. Real estate speculation within urban districts had chewed up existing squares and town commons,³ the decline of traditional public life accompanying the growing metropolis diminished the importance of the traditional functions of public squares,⁴ and few squares were added during the urban expansion.⁵

It has been only since the 1960's that the tradition of urban space

³ John R. Stilgoe, "Town Commons and Village Greens in New England: 1620 to 1981," in On Common Grounds, ed. R. Flemming, et.al., 1982: pp 7-36.

⁴ J. B. Jackson pointed out that the close association between traditional American public space and the public authority is attributed to the decline. "The American Public Space", in The Public Interest, No.74, Winter 1984, pp 52-65.

⁵ S. B. Warner described the phenomenon as: "The effect of three decades of a building boom ... was a city without squares of shops and public buildings, a city without gathering places which might have assisted in focusing the daily activities of neighborhoods. Instead of subcenters the process of building had created acres and acres of amorphous tracts -- the architectural hallmark of the nineteenth and twentieth century American big city ... whatever community life there was to flourish from now on would have to flourish despite the physical form of the city, not because of it." Philadelphia: Private City, p 55.

has gained a widespread emphasis.⁶ It was, characteristically, an experiment of attempting "an unprecedented openness to new ideas and possibilities" that dwelled in "a rhetoric posture yet in a philosophical vacuum" (Cranz, 1982: p 137). The search for a new concept has since prevailed, resulting in the trying out of many versions of European precedents.⁷ Traditional sentiment toward natural features such as lawn, trees, and bushes was substituted by a pursuit for more usable and functional open spaces, aptly phrased "from lawns to plaza."⁸ Despite the attempt to create appropriate design concept for urban open spaces, many recent developments have been criticized for their misapplication of precedents or improper design, as illustrated in the Copley Square example presented in Chapter 2.

Criticism, re-examination, and reappraisal of recent experiences and historical precedents characterize the current thinking on open space design, following the enormous surge in the building of parks over the past century and, more recently, two decades of extensive

⁶ In fact, the needs for cultivating urban open space had been advocated by design professionals, long before the open space era was opened up in the 1960's. Early in the 1940's, there had begun a considerable debate about landscape design approaches in an urban settings, as part of the modern movement debate. (Landscape Architecture, July, 1932 pp 289 - 295, "Possibilities in Landscape Design.")

⁷ The introduction of C. Sitte's work to America and G. Cullen's influential book, Townscape (1964) brought a considerable reawareness of European ways of place-making, which triggered the reintroduction of the urban space tradition.

⁸ Paul Friedberg's address in his article of the same title, January, 1965, Landscape Architecture.

experimental open space design. This prolific reflection, however, is not grounded with a consistent vision of the qualities urban open space should possess. Instead, there is an entire constellation of concerns and ideas. On the one hand, a practical, 'diagnostic' search for a workable solution prevails. This down-to-earth, back-to-basic-human-needs approach, which has been most rigorously addressed by W. H. Whyte's work,⁹ reigns over current thinking of open space quality. Everyday activities that have been neglected -- walking, strolling, sitting, eating, people-watching, etc. are now regarded as a source for inspiration. On the other hand, and perhaps due in part to the disappointment in the quality of "modern" open space -- criticized as sterile, barren, hard, and inhumane -- the park tradition has been reappraised. Some parks have become valued as historic artifacts (i.e., Bryant Park which was designated as a scenic landscape, with the help of preservationists); the value of natural elements -- the park's "greenness" -- has been readdressed for its merits of visual relief as well as ecology and is supported by environmentalists and horticulturalists.

⁹ Whyte's work has shed such a magnetic influence over all cases discussed in this thesis in one way or another, not to mention programmatic contents of the cases: The Copley Square competition invited W.H. Whyte to be a leading jury member; the diagnostic study of Bryant Park, which shaped directions for the park's improvement, was done by the Project for Public Space, Inc, a consulting organization founded by Whyte himself; the designer of a winning scheme of Pioneer Courthouse Square said in the design statement that he was inspired by Whyte's search for an genuine "American Square" as "American people like to be entertained ... they like to sit near the edges of spaces watching other people"; the Pershing Square Competition guideline quoted Whyte's work as a guiding principle.

If the past development of American open space is characterized as dialectic adjustment resulting in the creation of a series of ideal types of parks over the period of a century (Cranz, 1982), current development requires the accommodation of these dialectic interactions within a single process in order to produce a satisfactory and coherent vision. This task suggests arduous debate over the development process, yet provides an opportunity to reflect upon the idea of open space itself.

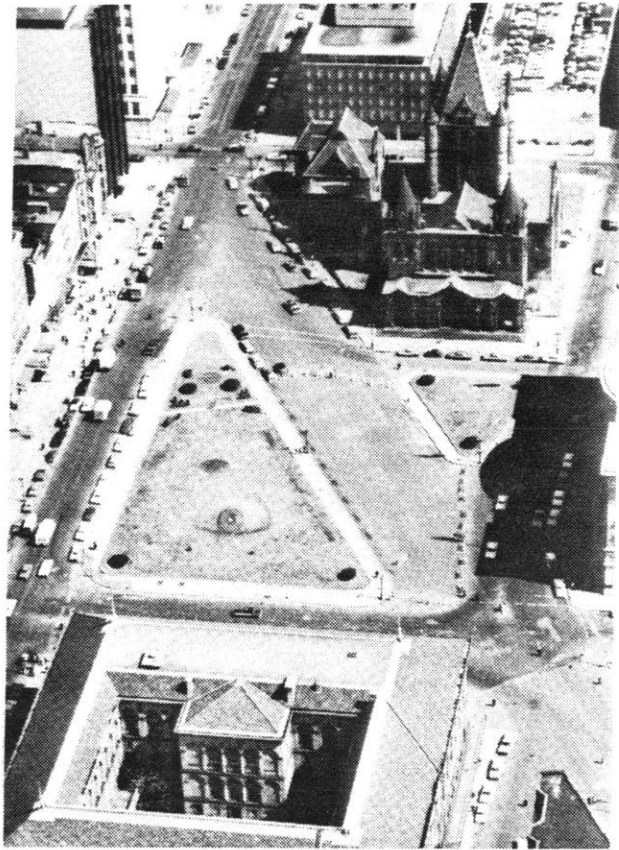
Historical precedents offer few constructive references to the challenging task of open space development currently. Rather, two kinds of transformation were practiced: layering of one development over another and changes that were stylistic in nature. These expedient, and politicized solutions have often prevailed to meet changing needs and constituencies. The layering of different elements of park use, whenever there emerged a new constituency, has often resulted in banal, simple-mindedly eclectic open space design. An example can be found in Washington Square in New York City's Greenwich Village which has added features such as playgrounds, monumental axial paths, and modern sculptures to this informal, original pleasure-ground of meandering paths.¹⁰ The result is a characterless park, composed of a jumble of park elements and services, with the exception of its enduring green.

¹⁰ "A Prospect for Parks," Donald E. Simon, Public Interest, 1978 and New York Times, September 12, 1982.

Continual stylistic changes have been practiced during the history of all of the parks discussed in this thesis, reflecting political interplay. A simple, paved square after the English tradition of urban square was replaced by an Italian-plaza in Copley Square. The pleasure-ground park with meandering paths of Bryant Park had been replaced with a Beaux-Arts monumental park in the 1930's. Pershing Square has been more repetitiously redesigned: The periodic change in plantings had occurred before the 1950's when a more symmetric organization replaced the old rural park setting. (Figures 1, 2, and 3.)

Current development of open space is involved in a continuing search for an appropriate design concept within an urban setting, and it is a search for the type of design that meets contemporary needs as well as providing a timeless quality that will accommodate constantly changing needs. Cases of privatization, because they have attracted much public attention, provide an opportunity for intensive discussions of a suitable design character.

A simple, paved square
before 1966.



The winning design of
the 1966 design competition.

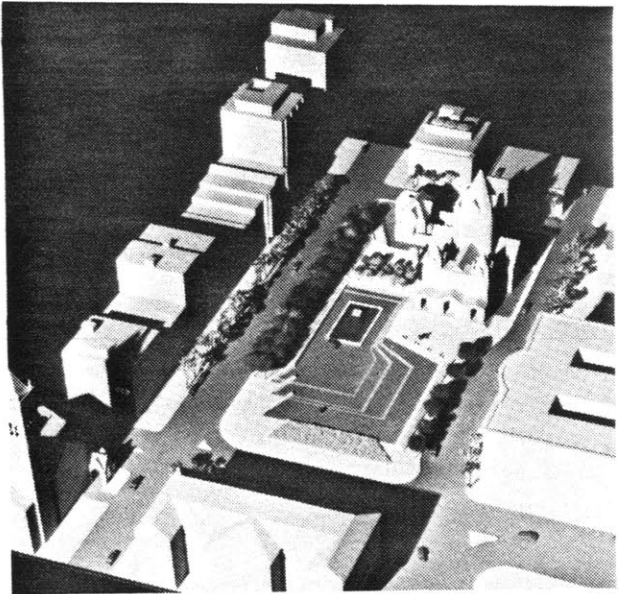
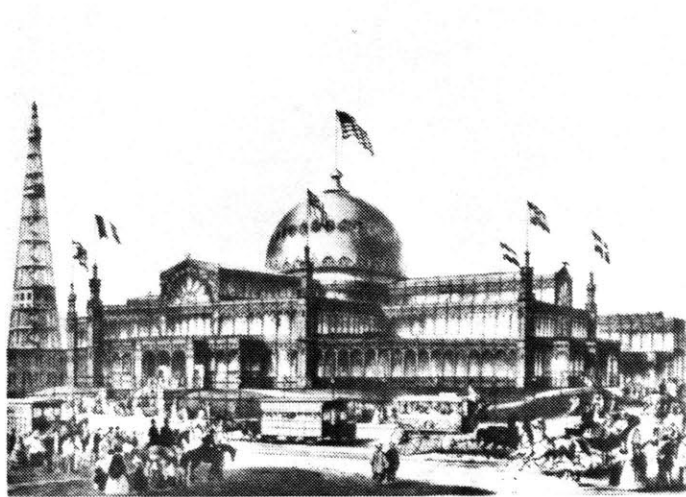
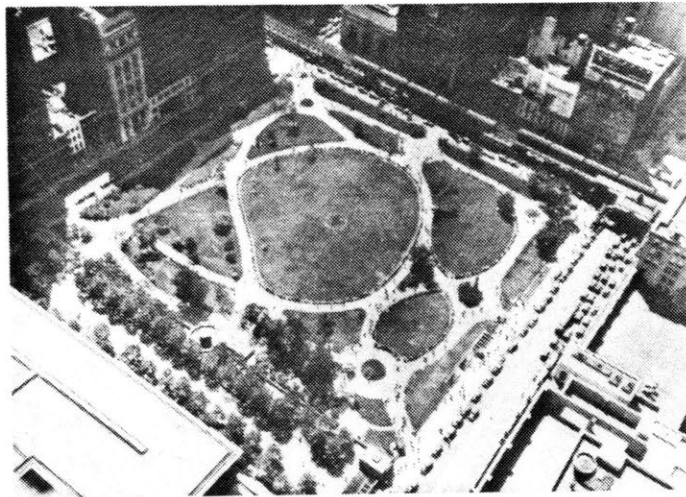


Fig. 1. Historical Transformation of Copley Square:
From an English Square type to the style of Italian plaza.
(Source: Boston Magazine, "Elysian Oasis: The Triumphant
Transformation of Copley Square.")

The crystal Palace, which stood from 1853 through 1858.



An aerial view of the 1871 design of Bryant Park.



Redesigned Bryant Park in 1934.



Fig. 2. Historic Transformation of Bryant Park
(Source: The BPRC, 1985-86 Annual Report.)

1887: An original
pleasure-ground park.



1950: Showing changes
in plantings with
tropical plants.



1956: New design with
an underground garage,
which aimed at controlling
undesirable use in an
previous informal setting.



Fig. 3. Historical Transformation of Pershing Square
(Source: J.S. French, Urban Space, 1978.)

3-2. Programmatic Vision:

To have it all, balancing is a key.

Underlying the programming process of successful open space development involved with intensive private involvement, is the conviction that all conceivable interest groups must be represented through the process of participation. Participation has been considered to be ideologically good as well as having practical value.¹¹ Community participation has been regarded as a means to better identify user needs of the general public, and participation by business groups has aimed at securing financial support. Furthermore, support from both citizens and business groups has been demanded in order to mobilize public funding.

The structure of the participation process differs, depending upon the type of project initiation among cases. The Copley Square Centennial Committee (CSCC) and the Pershing Square Management Association (PSMA) incorporated wide community participation into the programming process and therefore they were able to internalize conflicts and to draw up agreed-on program guidelines for the design competition. In the Pioneer Courthouse Square case, the participation process was directed by the Citizen Advisory Committee appointed by the City Council of Portland, and consisted mainly of business groups. Although the Committee included

¹¹ The failure of the previous design competition of Copley Square in 1966 was attributed partly to a lack of community participation, resulting in a lack of general support and misplaced understanding of community needs.

numerous community meetings, the process did not succeed in resolving conflicts over the scale of commercial use and inclusion of a permanent structure. The Bryant Park Restoration Corporation (BPRC), driven by the need for more fast implementation, drew up a planning and design proposal for public review, relying on a conventional planning process utilizing input from professional experts.

The result of these typically modern, pluralistic, complicated, and democratic processes is a kind of compromise. Despite the differences in programming processes, many similarities are to be found in the program objectives cited among privatization cases.¹² The compromising of the qualities of "urban square" and "park", capitulated as "balancing." Balancing was explicitly addressed as a critical objective in the Copley Square design guidelines: "... areas for quiet enjoyment and reflection as well as a place where a crowd can gather" were to be provided in the square.¹³ Similarly, the Pershing Square guidelines suggested that the new design should provide "a social and cultural activity center for Los Angeles" and at the same time, "a response to the much felt needs for physical

¹² The similarities are partly due to the flourishing communication channels among cases. Reciprocal influence took place through an exchange of information among involved organizations. Study by way of comparison is a trendy way of looking for precedents in private organizations. Also, a nationwide organization, notably, the National Endowments for the Arts, which provided funds for carrying out competitions of Copley Square and Pershing Square, has been a source of mutual influence.

¹³ The competition programs of Copley Square; 1983: p 28.

and visual relief within the 'hardscape' of Downtown in a manner that celebrates the beauty and educational benefits of a botanical exposition."¹⁴ Pioneer Courthouse Square guidelines clearly advocated an urban square, not another park, that "exhibits a character distinctive, dynamic, elegant, inviting, and unique to the area, and accommodates places of refuge, objects of interest, information, and orientation features."¹⁵ Despite the strong orientation for urban square, some softening elements of a "green" were asked to be introduced during implementation of the winning design, modifying the original concept.

Unlike the three cases in which an opportunity of balancing the qualities of urban space and park in new designs were offered, Bryant Park presented a limited opportunity to change the existing landscape. The resulting notion was the juxtaposition of two concepts: The contrast of the park-like character of the main portion of the park, to the urban space character by addition of a commercial restaurant to the Library building was deliberately made.¹⁶

¹⁴ The competition guidelines of Pershing Square; 1986: p 5 and p 14.

¹⁵ The competition guidelines of Pioneer Courthouse Square; 1980: p 4-2 and p 4-3.

¹⁶ This approach of contrasting two design ideas did not receive a favorable reaction, because of an aristocratic image often associated with traditional European or American public spaces. (As will be presented later in this chapter, entries in the design competition of other cases which had a similar approach met unfavorable reaction.) In fact, the BPRC discarded a recommendation of cafes of modest scale underneath trees, that had

Balance of the two traditions was regarded as a way to meet various expectations and to create a timeless, enduring setting adaptable to changes. That is, the longevity of design ideas was sought through flexibility. As stated in the Copley Square guidelines, "The design should avoid emphasis on the fashionable and provide a suitable setting for a range of activities, no matter the trend."¹⁷ Or as the jurors of Pioneer Courthouse Square stated, "The design must have a "timelessness," not be of a specific period or architectural thought, and be a concept that endures in quality and use, with a built-in flexibility for accommodating both known events and future dreams."¹⁸

Another trait typical of this balancing approach is a comprehensive range of functional requirements. Commonly addressed functional requirements can be found among the cases, despite some differences in terms of size and qualities of a setting; they include ample seating, a performance area, technical support system, storage, kiosk or vending stalls, and a cafe/restaurant structure.

A high degree of design control was also pursued in the privatization cases, reflecting highly specific and prescriptive

been made by the Project of Public Space, Inc. in 1981.

¹⁷ The competition programs of Copley Square.

¹⁸ The Jurors' report, The Portland Development Commission, 1982: p 2.

design programs. The Pioneer Courthouse Square case specified design qualities as well as design requirements: year-round, people-oriented programs, flexibility of use, compatibility to the surrounding environment, natural and public surveillance, ease of access, and references to local history. Further, the Pershing Square and Copley Square cases further suggested more specific design solutions in addition to general design qualities. (Refer to Appendix II for the design guidelines of the three cases.) For example, regarding natural materials, both cases suggested "trees to be used to define vista, passage, and activity areas" and plant materials "to ensure the presence of seasonal colors." Furthermore, the Copley Square guidelines specified the linear footage of fixed seating and the numbers for flexible seating.

In the extensive participation process, drawing up detailed design guidelines is an event in itself that functions much like a catharsis for participants. Every expectation, desire, and hope is given the opportunity to be voiced and included; every conceivable activity can be anticipated and accommodated. As such, the programming process has provided a sense of control and of contribution to involved people. What is often valued, is sought after in the informed decisions that occur through a public learning process.¹⁹

¹⁹ The public learning process has been emphasized in all cases by incorporating public lectures and forums focusing on the programming process.

An assumption underscoring the participation process and balanced programs is that the clientele of open space development is the public. The public is defined as people with communal needs, rather than a collection of subgroups with irreconcilable needs. The overriding emphasis of programming has been, therefore, to appeal to the "everydayness" of open space. As aptly phrased in the Copley Square competition guidelines, urban open space:

"a place where passers-through will want to stop, eat, sit, read, observe city life, chat and relax. The elderly should be attracted to sit and chat; mothers should want to bring their children; the Public Library should see it as a place to hold its children's reading hour on a nice afternoon; shoppers should feel comfortable stopping to relax; workers should find a bench on which to eat their lunch. Thus, the Square should be a pleasant, inviting and safe place for many different groups."

3-3. Accommodating Commercial Use Within Permanent Structure: Encroachment or Enhancement?

The overriding concern for balance has become fragile in cases of privatization as far as the accommodation of commercial uses and the installation of a permanent structure has been concerned. No other issue of open space programming and design has stimulated more arduous debate than this, since the decision on this matter suggests impact on the design, use, and management of an open space. Commercial use greatly influences the activity pattern of the open space; a permanent structure, though dependent on its scale and form, could dictate the overall design character; the commercial operation carries significant implications for security

and the perception public space. However, the introduction of such use and associated structures could ensure more stable long-term financing for management. (Each of these last two points will be dealt in Chapter 4 and Chapter 6.)

Interest groups have been divided according to their opinions on this issue. Obviously, business groups who are the primary financial donors as well as prime beneficiaries of an enhanced open space image and management-oriented individuals generally have supported the incorporation of a commercial use. The commercial use has been, no doubt, fiercely opposed by park purists and preservationists. General users' responses have been mixed views. In this situation, the debate has been centered around two critical issues: the scale of commercial use and its architectural treatment.

An absence of direct precedent of positive incorporation of commercial use within public open spaces in American cities has triggered rather negative concerns in privatization cases, resulting in the reverberation of the strongly-held debate surrounding commercial encroachment. Encroachment attempts have prevailed throughout American open space history, in opposition to the highly idealistic guideline once advocated by F. L. Olmsted. Buildings, according to Olmsted, were to be kept to a minimum in the park grounds since the prime purpose of parks is "rest and refreshment of mind and body which come from the tranquilizing

influence of contact with natural scenery." In reality, along with the expansion of park facilities including cultural, educational, and recreational uses pursued early in this century, commercial encroachment has quite often been attempted. The history of Central Park in New York City illustrates how vulnerable parks are to private encroachment: All such proposed plans for Central Park, if ever realized, would occupy most of the park. (Figures 4 & 5)

In principle, the inclusion of private concessions within a public park land should be a necessity, auxiliary function to recreational facilities, and their operation should be enforced by public regulation. However, concession operations sometimes fall outside the bounds of strict control. Often, quality control loosens, service needs such as parking, maintenance, and utilities are in greater demand than originally predicted, and once introduced, an invulnerable position is often taken by private operators in defending and expanding their rights.²⁰

²⁰ A yielding to the interests of private concessionaires in the name of providing conveniences to the public often occurs: Once private concessions are established, their demanding of more services for continuing operation or for maintaining the quality of services are difficult to turn down by related public agencies. (Refer to Natural Park Service(1982): chapter 6. for more details.) In the case of the Tavern-on-the Green, a concession in Central Park of New York, notorious for Commissioners Moses' provision of a parking lot for the restaurant by bulldozing a children's playground, became a classic case of private interest and public corruption being combined at the expense of public interest.

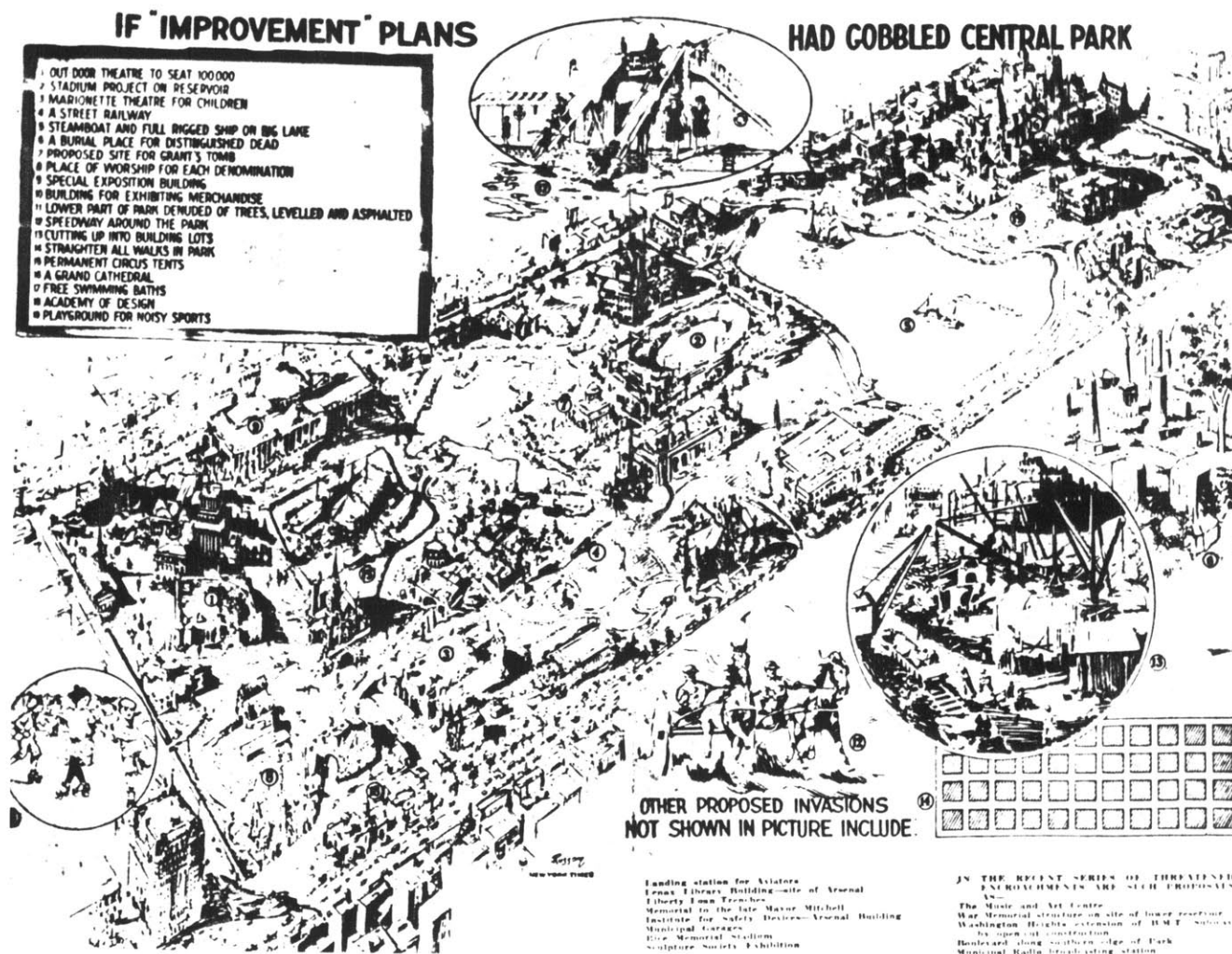
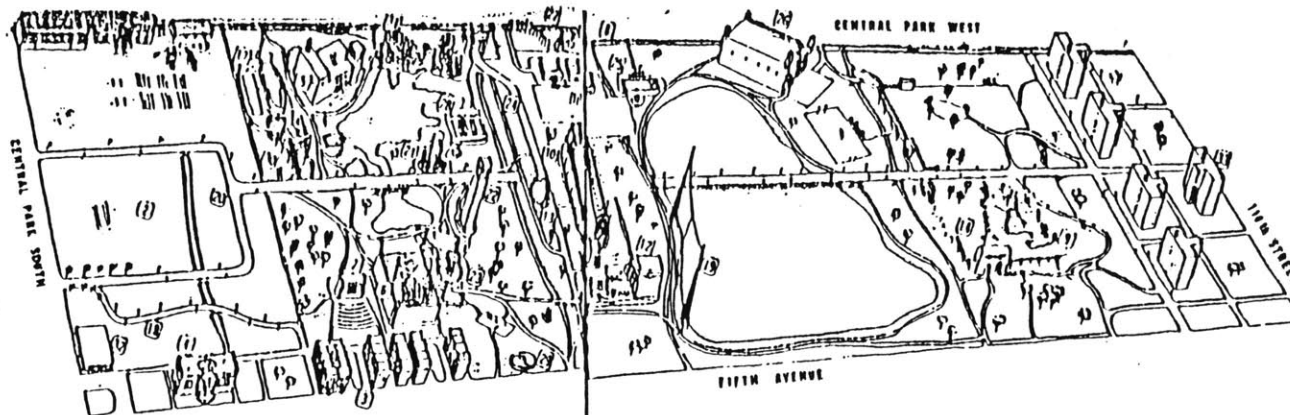


Fig. 4. Encroachment attempts on Central Park, New York City.
(catalogued in 1926.)

(Source: Parks and Playground Association of the City of New York
1926 Report.)



"IMPROVEMENTS" SUGGESTED FOR CENTRAL PARK
SINCE 1900

Suggested "Improvements" to Central Park since 1900 as seen by
Ken Fitzgerald. Based on information gathered by Alan Becker.
Greenward Foundation.

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Sketch by Ken Fitzgerald, based on information supplied by Alan Becker

1. Exposition Building, 1903.
2. Drill ground, 1904.
3. Selling off lower park for building lots, 1904; proposed for west side of Fifth Avenue by Mayor La Guardia in 1930s.
4. Building for National Academy of Design, 1909.
5. Opera House, 1910.
6. Outdoor theatre seating 30,000, 1911; opera amphitheatre proposed 1913.
7. Alphonse theatre, 1911; proposed again 1964 and 1965.
8. Relocation of Central Park West streetcar tracks, 1917.
9. Trenches in North Meadow as war display, 1918.
10. Large stadium, 1919.
11. Airplane field, 1919.
12. Sunken oriental garden, Memorial Hall for war trophies and sports amphitheatre, 1920.
13. Music stand and road connecting drives to be called Althea Memorial, 1920.
14. Underground parking lot for 30,000 cars, 1921; proposed many times since.

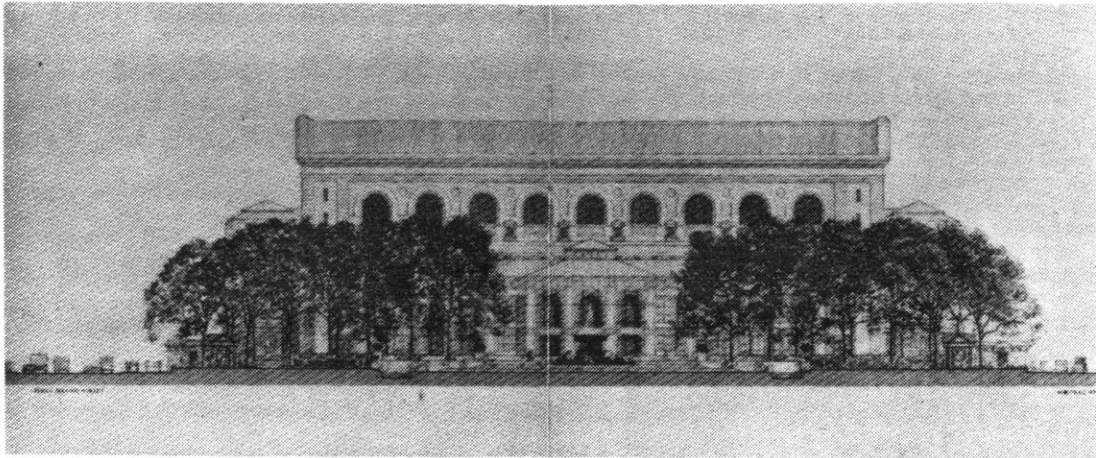
15. Police garage, 1921.
16. Music and Art Center, 1921.
17. Swimming pool, circus and running track, 1923.
18. Filling in of Pond for new driveway, 1923.
19. Radio towers for city radio station, 1923.
20. Central roadway to relieve city's traffic congestion, 1923.
21. Statue of Buddha, 1923.
22. Carillon tower, 1923.
23. Fountain of the Seasons, 1929.
24. Promenade connecting Metropolitan and Natural History Museums, 1930.
25. Recreation building and swimming pool, 1933.
26. Armory and stables, 1940.
27. Plaza of South America, 8 acres, 1941.
28. Recreation Center for the Elderly, 1953.
29. Garden for the Blind, 1953.
30. El Station as monument to Elevated Railroad, 1955.
31. Amusement Center, 1955.
32. Huntington Hartford Outdoor Café, 1960.
33. Housing Project, 100th to 110th Streets, 1964.

Fig. 5. Encroachment attempts on Central Park, New York City.
(catalogued in 1981.)
(Source: "The Christo: The Gate Project," New York Parks
Department, 1981.)

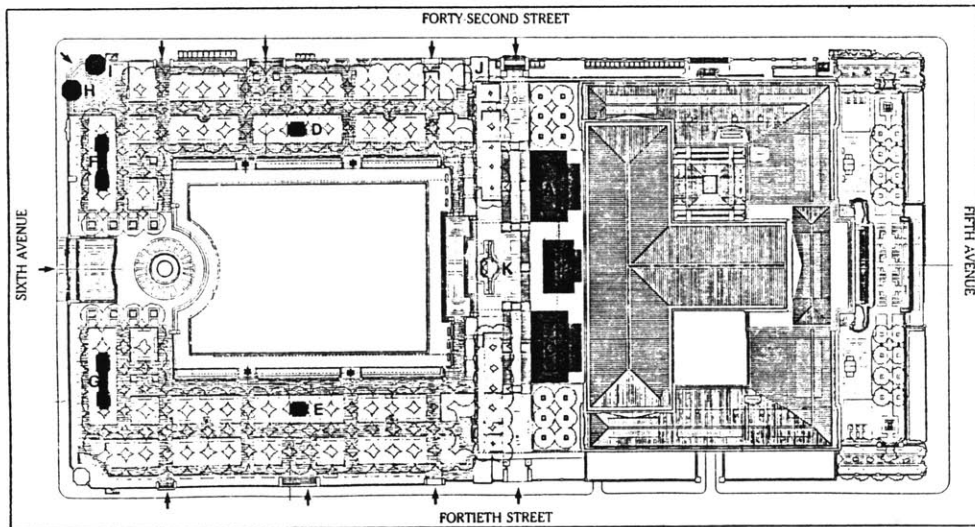
In addition to concerns over the external impact of commercial use, the symbolic statement of private interest also accompanies the debates over inclusion of permanent structures. The architectural aggrandizement obtainable by way of a large structure is an obvious desire of certain business groups. A piece of architecture is regarded as physical presence of its supporters, whose prestige could be enhanced by such an embellishment of open space. This idea, although not explicitly advocated by the private sponsors in privatization cases, underlies their preference for major architectural statement.

As such, the realization of a prominent architectural element has often been closely related to fund-raising in privatized cases. For example, in Pioneer Courthouse Square, the desire for a conservatory was so strongly advocated by business groups within the Citizens' Advisory Committee that the competition programs suggested a choice between design solutions with a conservatory or others with a modest structure. When the winning design advocated a more open setting, business groups refused to cover construction costs, almost resulting in the cancellation of implementing the winning design.

Eventually, in each case a modest scheme for commercial use was adopted instead of a large structure. Bryant Park (Fig. 6.) now plans to include two modest cafe/restaurants instead of the originally proposed 1,000 seat restaurant encapsulated in a glass



Bryant Park: The elevation of an originally proposed restaurant, a two-story glass pavilion, covers the facade of the Public Library, a landmark building.



Bryant Park: Note three small one-story cafe structures in front of the Public Library building. The BPRC then reduced the number of cafes from three to two.

Fig. 6. Change in a restaurant proposal for Bryant Park:
 An original and newly proposed plan.
 (Source: The BPRC annual reports: 1983 and 1984-85.)

pavilion; Pioneer Courthouse Square placed most commercial functions underground with a modest 200 seat cafe structure above ground; Copley Square scaled down the proposed cafe to allow only a 'demountable' kiosk with outdoor seating; Pershing Square negotiated the size of the structure down to accommodate 200 - 500 seats.²¹

By scaling down commercial use and the scale of any permanent structure, functional enhancement, rather than physical encroachment, was emphasized in the case of privatization. Architectural treatment followed accordingly in designs for building structures which stressed a sense of the building's being a natural part of the space's scenery, preferably dissolving into the green setting as well as maintaining a distinct urbanity. Glass structure have been favored for their transparency, informality, "light-touch," as well as the invisibility with a backdrop of greenery. At the same time, the use of glass and its association with a modern, high-class quality, and the inspiration of notions of a 'crystal palace' has often been used as a relevant precedent for such building within an open space setting.

²¹ The Pershing Square case experienced relatively less arduous debate about commercial use, compared to other cases. Prevailing permissiveness toward outdoor eating in the benign weather, and the liberal attitude toward commercial operations in California can be associated with the lessened controversy around commercial use in a public park land. There is also another factor. Having an existing three-level garage below the park, the site can sustain only a one or two story, light-weight structure.

3-4. Design Statement

The programming stage is one phase of the development process, and the realization of the programs in physical form is quite another. Design programs outline the conceptually fundamental qualities and functional needs, from which design interpretations can be made in various manners in order to communicate different design statements. The design programs of privatization cases are based on a consensus of public need and desire, however, private influence may subtly permeate the selection of a design and its implementation.

Complacent or balanced design solutions

The design programs described in the competitions of several of the cases tended to emphasize "balance," as an effort to represent diverging interests. What type of design solution can this democratic process lead to? Are benign, banal solutions preferred? Is permissiveness allowable within the constraints of "democratic deliberation," using more inventive, non-standardized design approaches?

The elaborate design programs provided as a part of the design competition certainly assumed an honest design interpretation. However, complacency to the guidelines sometimes led to other

criticism, i.e., a mediocre design. Copley Square is a case in point. Officially, the winning design was praised for best meeting every specific competition guideline: balancing active and passive, green and urbanity. Nevertheless, other viewers criticized the scheme "to have tried to do everything but failed to make Copley Square a distinctive place"²² and even to be "chaos, ambiguous, a compromise between the program requirements, ended up as a kind of architecture without architects."²³ The flatness of the winning design was attributed partly to overly specific program guidelines which demanded conflicting features in a relatively small, 2.5-acre square. As pointed out by one journalist, "if we ask every public space to be everything -- a quiet park, a commercially active plaza, a pedestrian through way, and a distinctive 'place' -- we risk getting a little of everything, nothing being outstanding."²⁴

In contrast to the design selection for Copley Square, dictated by a "non-controversial-as-possible" attitude, other design competition cases have presented relatively more openness to new ideas, within certain limits. The selection process of the winning

²² This is John R. Stilgoe's comment, one of the competition jury members.

²³ This is an after-thought expressed by one of jury members, Phillipe Robert.

²⁴ Boston Phoenix, October 2, 1984, "Back to the Drawing Board", Yvonne V. Chabrier.

design from five finalists²⁵ of Pioneer Courthouse Square and Pershing Square illustrates this point.

Five finalists in the Pioneer Courthouse Square competition included three schemes incorporating a conservatory-type structure and two schemes favoring a more open setting with less use of architectural elements. (Fig. 7) Jurors' comments on the three schemes making a strong architectural statements were complimentary yet rejecting: the Eisenman/Robertson scheme that located the 'Portland-Pavilion' and natural features symbolizing the local region's landscape on a superimposed grid and warped plane was praised for its "physical simplicity and intellectual complexity of the concept," but was "overly symbolic to function as a setting for the day-to-day informal activities"; Moore/Halprin's scheme exhibiting elaborate, whimsical architectural features -- a water garden, an arcade, an exotic garden, a clock tower, etc. -- was "a wonderful, humorous, elevating and inventive design, making the square design an event in and of itself," but was judged unsuitable in the context; another scheme in which a grand pavilion was located with a symmetrical central square as its counterpart, much like a European plaza, was criticized less accommodating of small scale informal activities. One of the other open-area schemes was

²⁵ In a design competition, there is often a tendency of selecting various approaches for finalists, to get benefit of contrasting ideas. The two-stage format of the design competition in three of the cases (the first stage for the conceptualization of the design idea and the second stage for design development) has particularly allowed a range of contrasting ideas to be reviewed during the final stage.

rejected on the grounds that it included the too specific and a rigid use of architectural artifacts on the periphery of the square.

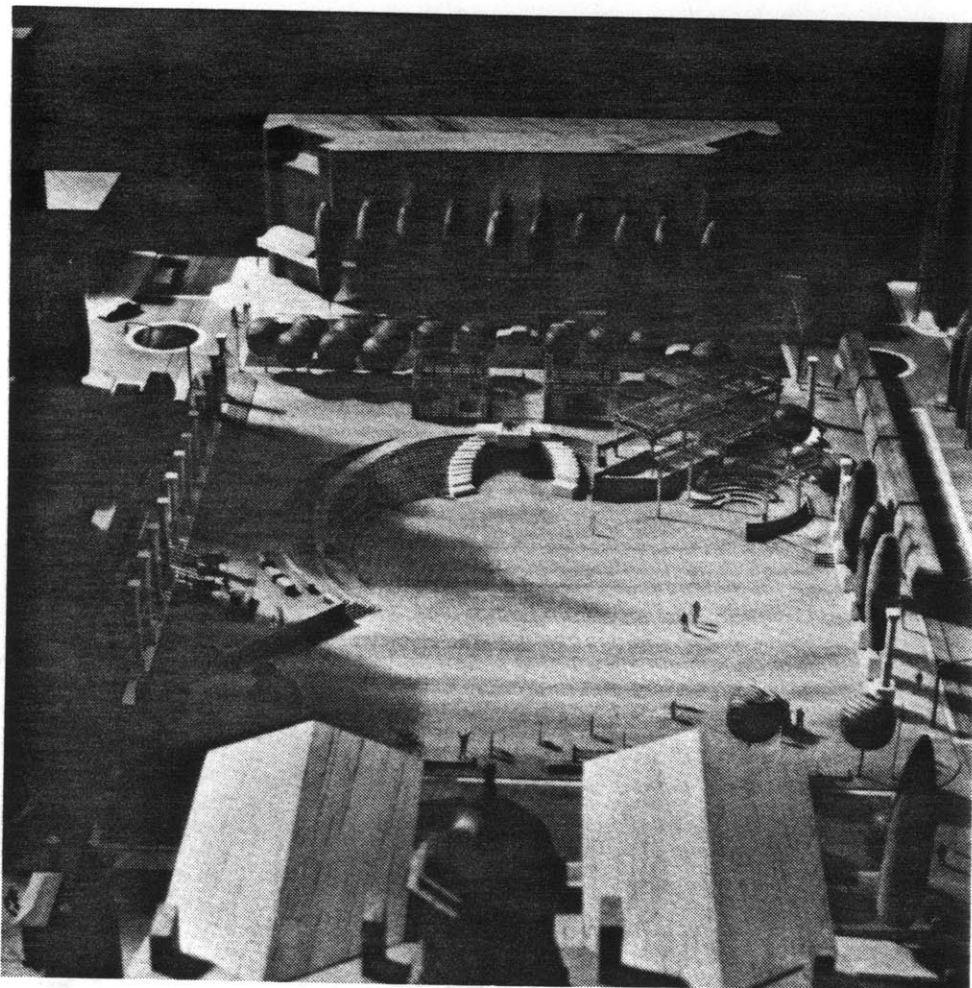
The winning design was applauded by jurors for its compromise of various needs while achieving the desired quality of space in its own right:

"The approach embodies a civic square with the city-wide celebrations which should properly take place in this dynamic city. The space is defined and reinforced by simple terraced levels providing viewing and activity relationships, both formal and informal. The concept provides for the diversity of small and large scale activities, and humor, without compromise of dignity and elegance."²⁶

The potential flexibility of the winning design to incorporate more community input into the further design development was considered to be positive feature, in comparison to other finalists with imposing design concepts. In fact, the winning design later included such features as the consolidation of a structure into a more prominent crystalline element and a cascading water fountain, to reflect certain business groups' desire for a "distinct identity."

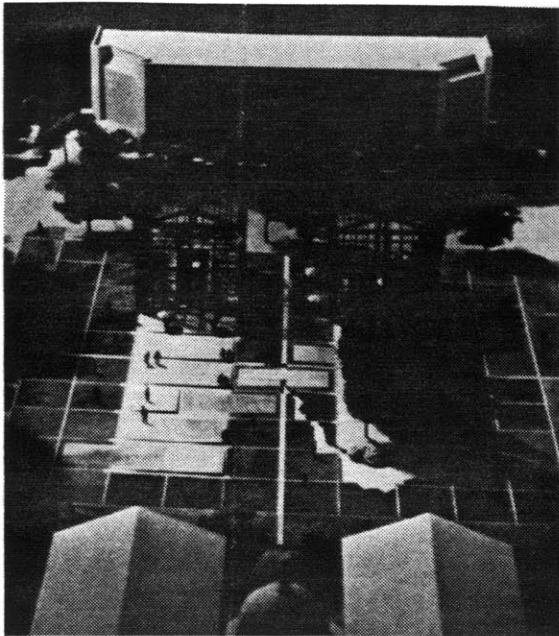
The Pershing Square competition presented a receptive attitude toward new ideas, possible partly because of the solid commitment of business groups before the competition was put forward. The five finalists of the Pershing Square competition included both traditional and bold designs. (Fig. 8) Two designs that were

²⁶ Portland Development Commission, the Juror's report, 1982.

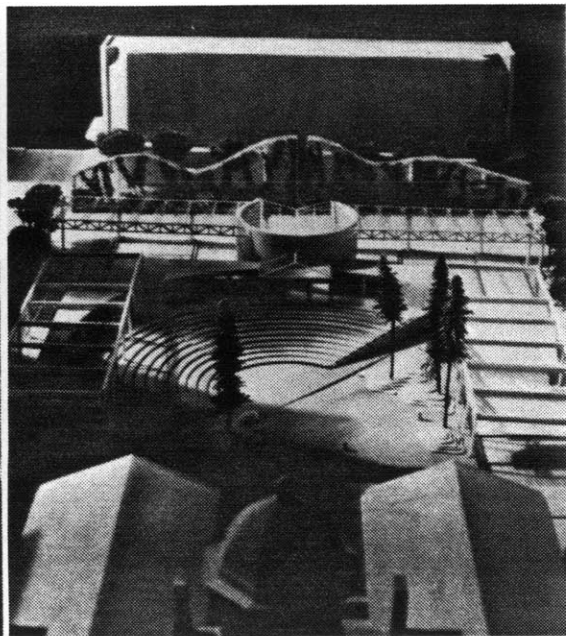


The Winning Design of Pioneer Courthouse Square
by W.K. Martin, et. al.

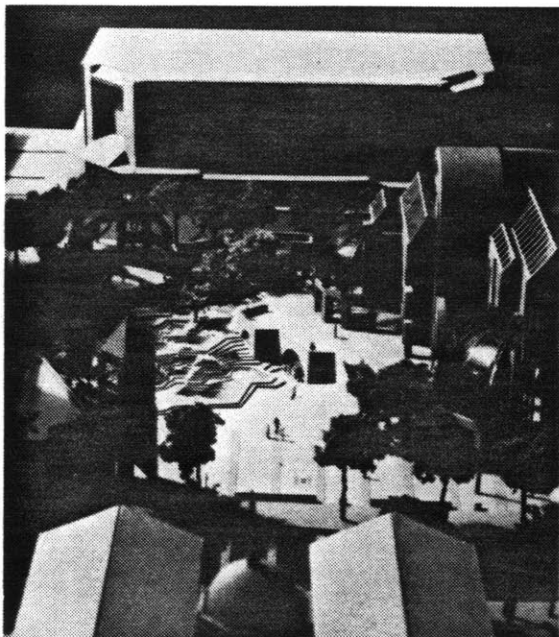
Fig. 7. Five Finalists of the Pioneer Courthouse Square Design Competition. (Source: Portland Development Commission, The Juror's Report, 1982.)



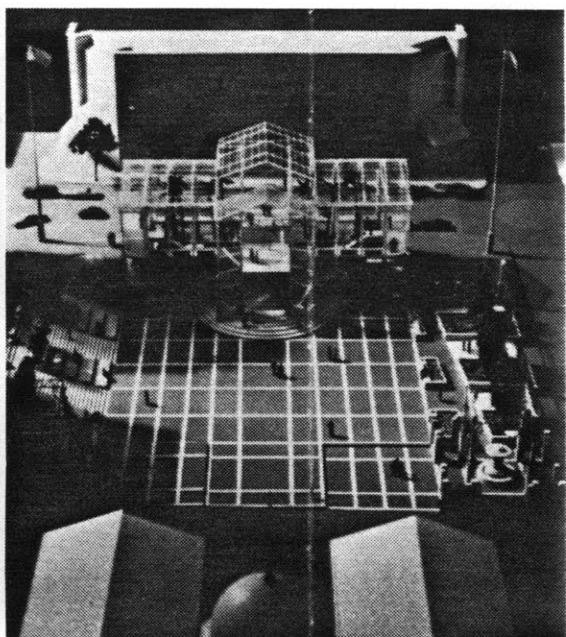
Eisenman/Robertson



Machado/Silvetti, et.al.

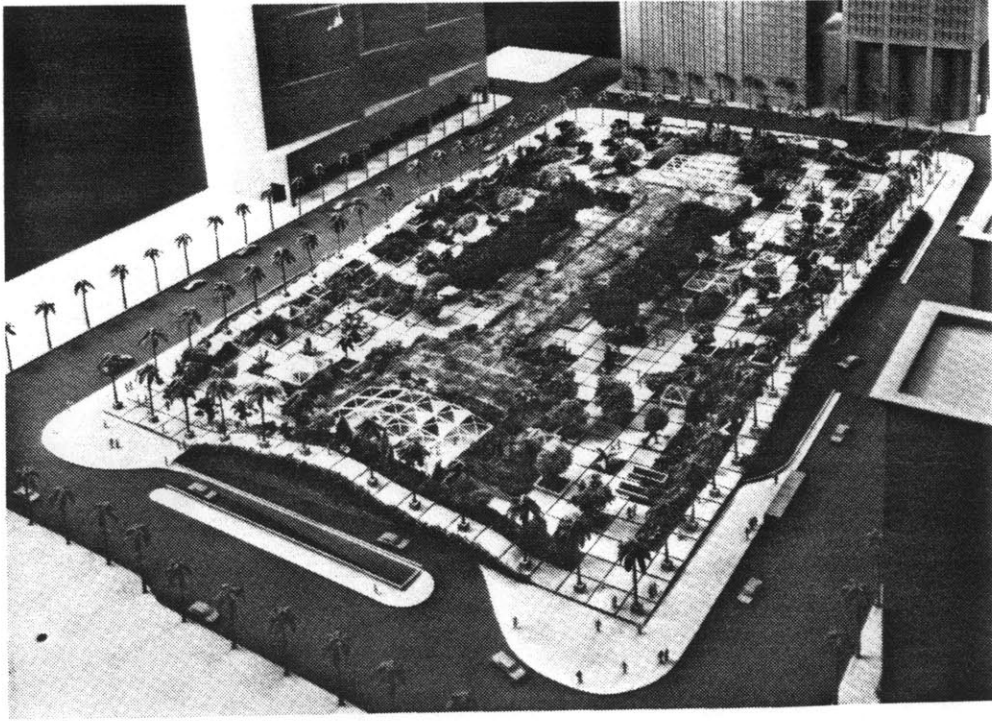


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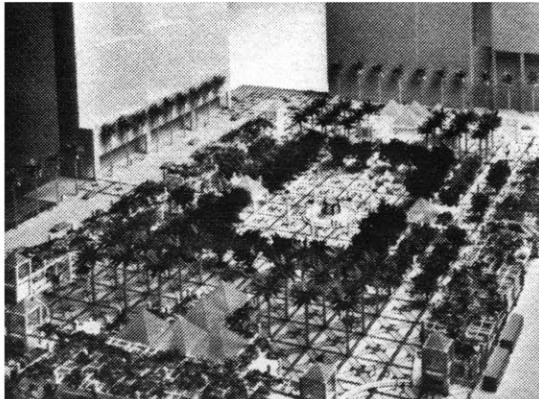
Geddes/Brecher, et.al.

Fig. 7. Five Finalists of the Pioneer Courthouse Square Design Competition. (cont'd)

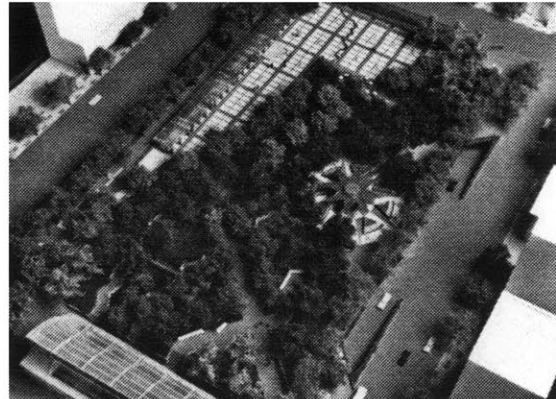


The Winning Design by SITE, Inc.

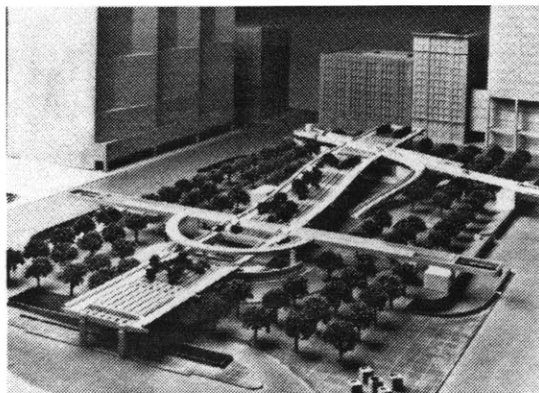
Fig. 8. Five Finalists of the Pershing Square Design Competition.
(Source: The PSMA, The Jurors' Report, 1986.)



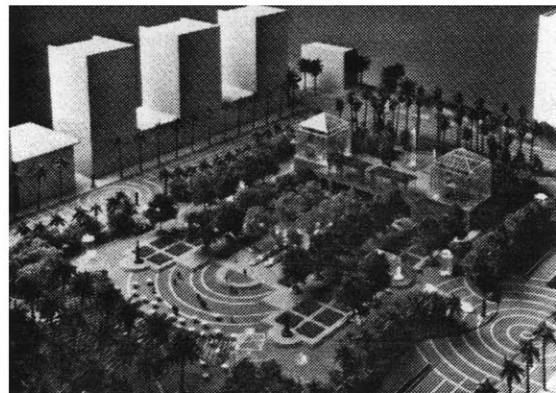
F. Welch Associates



Phelps/Son Architects



B. Levine Architecture



The SWA Group

Fig. 8. Five Finalists of the Pershing Square Design Competition.
(cont'd)

inspired by traditional square concepts presented formal, symmetrical features: an intricately patterned floor symmetrically organized with glass pavilions, rings of trees, and a centerpiece fountain/sculpture was presented in F. Welch's design, and the SWA group's design included the use of an axial and converging symmetry surrounding and amongst a large kiosk, rows of trees, and a patterned paved area -- much in a tradition of a Beaux-Arts fashion. Three other schemes employed avant-garde approaches, each addressing unique ideas concerning culture, city, and architecture: B. Levin's scheme is an extreme version of juxtaposing the artificial and natural elements with a dramatically sweeping freeway/trellis which flows freely through a grid of trees. Phelps/Son Architects' scheme presents a Venturi-like essay using cartography and history, by replicating the original land survey of the city on one diagonal half of the site and devoting the other to a thickly planted and sloping replica of the nearby Bunker Hill area. SITE's winning design exhibits an uninflicted grid pavement with its surface freely undulating, following the metaphor of "a magic carpet," with the symbolism of the paving grid representing the flatland street system of Los Angeles and the rolling edges of the area's hills and mountains.

F. Welch's scheme and the boldest, B. Levine's, were the first to be eliminated in the final process. The other two schemes were also eventually rejected: SWA's because of its thwarting of the diagonal circulation in the central area of the Square and that of

Phelps/Son's because of its image of an arboretum rather than that of a downtown open space. Similar to the case of Pioneer Courthouse Square, the winning scheme for Pershing Square was regarded as "the most conceptual and the least specific, and thus capable of evolution." One of jury members, Charles Moore remarked that the scheme "did not seem to complete the whole business of making a park but rather started a park that we can not really imagine the end of it." The practical merits of the flexible design were straightforwardly praised by another jury member as:

"... they gave us a concept rather than a totally designed project because, with all the various entities that will be involved in the approval process, there is flexibility for change and various ways to go that will make everyone happy. It is different and it is innovative and it works."²⁷

Preference for flexibility, adaptability, and growth in the selection of the final design is a natural product of the complex political interplay that occurs during the development process under public-private partnerships. Because of the involvement of many interest groups and more critically, of business groups, a collective decision-making process has been emphasized in cases of privatization. The form of the competition jury reflected the representation of various interests. In every case, the jury was comprised of experts in related professional fields including architecture, planning, landscape architecture, management, or cultural critics, as well as representatives of business and

²⁷ Summary of the juror's comments, The Pershing Square competition, 1986.

citizen groups. The representation of citizen groups was especially evident in the Copley Square and Pershing Square cases, in which chairmen of subcommittees of the Copley Square Centennial Committee (CSCC) and the Pershing Square Management Association (PSMA) which directed community participation before and after the design competition, served as jury members, providing continuous feed back to the committees. Certainly, this arrangement did not completely shield the process from political pressures, but enabled for such forces to be filtered through the public process.

The Reflection of proprietary interests

In privatization cases, the public programming and design selection processes are such structures that screen too much influence of business sponsors. That is, explicit statement of property interests, often found in historic public spaces that were created under relatively concentrated power structures, have been conscientiously guarded against. Nevertheless, subtle signs of private influence can still be found in these privatization cases. Similar design tools, traditionally employed to signify the presence of power and influence are still being used in current open space developments, such as the shaping of a vista or attention given to ease of movement, or the allocation of amenities in favor of adjacent properties.

A particular vista and the specific movement pattern were taken into account in favor of some of the private sponsors in Copley Square. Two of the initiating business groups, located at opposite corners of the square expressed specific interests: the Hancock Insurance Company at the southeastern corner of the square wanted its office workers to be able to walk across the square diagonally to a subway station on the other corner; Copley Place, located on the southwestern corner expected an open view from its main hotel lobby. The winning design reflected these interests, creating a diagonal pathway and freeing the streetside of Copley Place from trees. This solution was criticized as an attempt to make the Square a "forecourt for the Hancock."²⁸ (Fig. 9.)

In contrast to the winning scheme, the design concept offered in the second-place scheme of Copley Square was is noteworthy in that it deliberately avoided the physical manifestation of proprietary interests. That scheme placed a square-shaped green lawn ringed by rows of trees along all sides of the Square, a plan inspired by the "village greens" in traditional New England Towns. (Fig. 10) The scheme was attempted to make Copley Square not as an interstate of pedestrian walkway but a "place of its own right," free from influencing forces of abutting properties. The scheme was praised by jurors as:

"This scheme have produced an extremely simple scheme that could effectively combine charm with dignity. By conceiving of a Copley Square "green" on the Dartmouth side of the block, the

²⁸ This is Jury member, John Stilgoe's criticism.

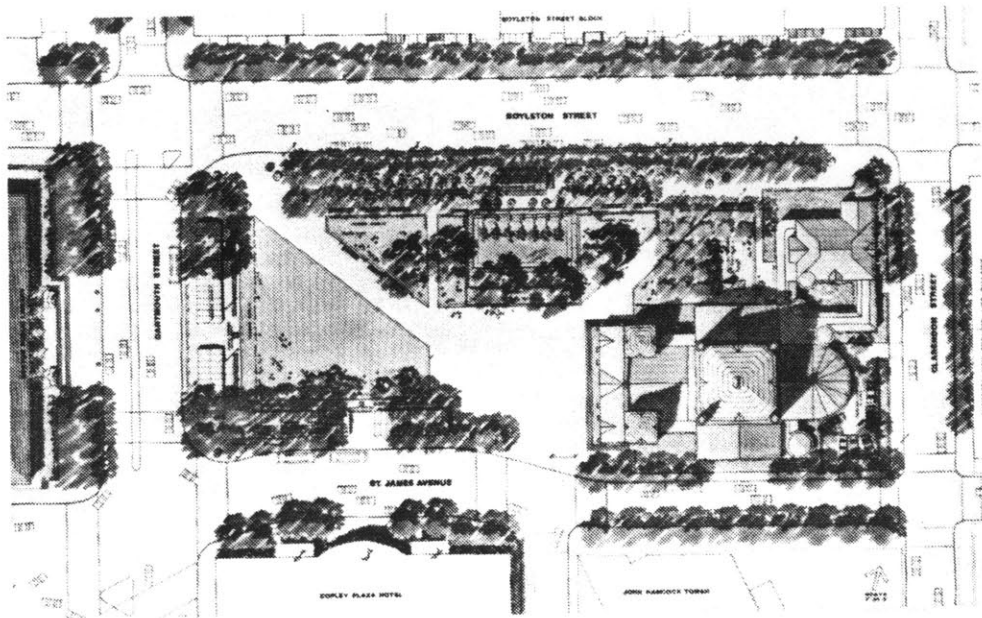


Fig. 9 The Winning Design of the Copley Square Design Competition.
(Source: The CSCC, The Juror's Report, 1984.)

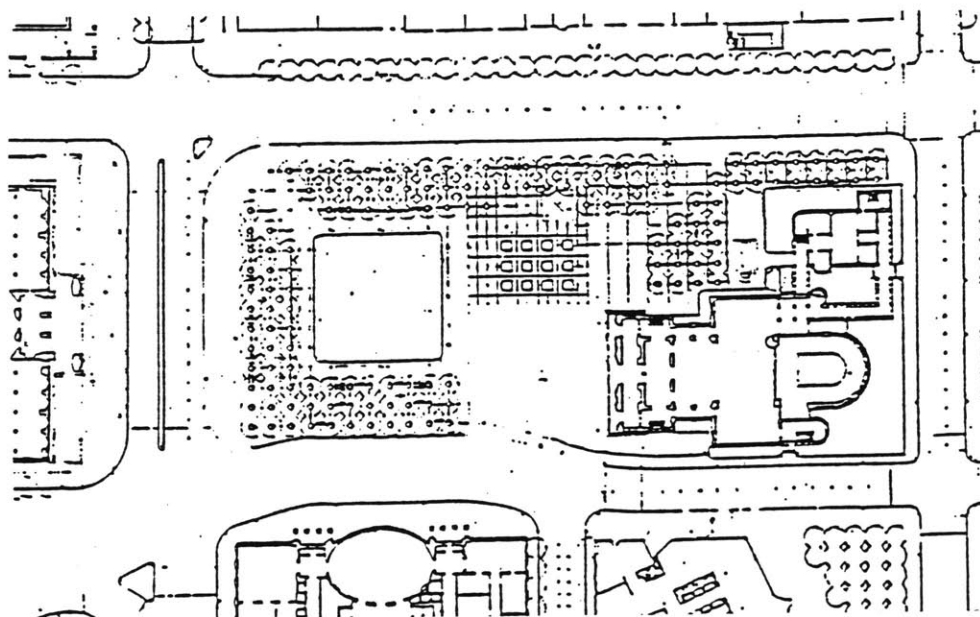


Fig. 10 The Second-place Design of the Copley Square Design Competition.
(Source: The CSCC, The Juror's Report, 1984.)

plan effectively pulls the formal geometry away from the Trinity Church, allowing for a rather "neutral" hard surfaced open space as the setting for the Church -- this scheme could be one of the more practical, charming, and more long-lasting solutions to the Copley Square redesign challenge."²⁹

The incorporation of design features amenable to interests of adjacent properties is noticeable in some cases. In the Pioneer Courthouse Square case, one particular design feature that was received favorably by downtown business groups was the inclusion of elaborate design objects along edges of the square -- a stoa-type colonnade along one street and the remnants of a historic wrought-iron fence on the other street. Despite that the scheme elicited criticism for its ambiguous eclecticism in using historic artifacts,³⁰ the approach was considered contextually responsible and suitable by participating private groups.

Finally, it should be mentioned that redevelopment of an open space itself is often an apparatus for fund-raising. Since substantial private contributions can only be expected with the promise of substantial improvement, new development has been preferred to incremental renovations of an existing open space. The CSCC, for example, was concerned mainly with new design, with little

²⁹ The Copley Square Centennial Committee, A summary of Jurors' comments, 1984.

³⁰ The winning scheme for Pioneer Courthouse Square received a citation award of Progressive Architecture in 1982. However, it was criticized by some juries as very episodic and only "one example of the consequences of the current fashionable cliches failing to understand the fundamental of urban design."

consideration of an improvement of the existing square from the onset of planning. Regardless of the criticism leveled at business groups' adherence to the need for major change, it is realistic to acknowledge their hesitance in contributing toward less noticeable change. Thus, for example, the PSMA experienced pressure for a new development from business groups after they had worked on minor improvements, such as providing events and clean-up with contributions from business groups. Also, less promising prospects for realization of a grand restaurant in Bryant Park has influenced the fund-raising of the BPRC. The BPRC has experienced decreasing contributions by private donors, clearly illustrating the difficulty to be faced in maintaining continuous private contributions without some substantial progress, being evident.

Conclusion

The contention between active versus passive use of open space, paralleled with 'urban space' and 'parks', has long been addressed in open space design. In cases of privatization, the contention was particularly explicitly addressed for two reasons. One is because of various interest groups involved in the programming process, which was deliberately designed, in some cases, to attract public support to an open space development with extensive involvement of the private sector. And the other is because of controversial program changes accompanying privatization cases,

i.e., the incorporation of commercial use and a permanent structure within public open space.

Within this situation which was loaded with conflicting claims, a 'balancing' approach prevailed over the programming process of privatization cases. It has been presented that the approach was reflected in the design program requirements and further carried on to accommodation of commercial use in a negotiated scheme. Further, an interesting result of private groups' extensive involvement in cases of privatization was also found in the emphasis on flexibility and open-endedness as criteria in selecting a design scheme, shown in cases which held the design competition.

Chapter 4

Public Access: Towards an Operative Definition

"The public realm gathers us together and yet prevents our falling over each other. To live an entirely private life means above all to be deprived of things essential to a truly human life."

Hanna Arendt,
The Human Condition, 1958

"We close our parks to outsiders in Nassau and it works out pretty well. I guess the city can't close theirs to their own, can they?"

Anonymous
New York Post, Sept., 14, 1973.

Will privatization of use take place as a result of a private intervention in the development and management of public open space? This question, capturing many of the concerns expressed about the effects of privatization, is weighted by conventional perception: That certain intrinsic qualities are attributed to public space and to private space and that an analogy of these different qualities might be carried further to privatized public space and private space.

A contrast between public space and private space certainly exists. Spontaneity and freedom are always associated with public space. Regardless how limited the realization of these qualities, they represent the long-held ideal of public space as a physical manifestation of a democratic, egalitarian, civilized society. Manipulation and protectiveness are often associated with private spaces, resulting from an attempt to avoid social realities within a boundary of private space. Notwithstanding the obvious simplicity of the perception, what is overlooked is the fact that there is a continuum of public/private spaces within the real world. Privatized public open space can be understood as one variation in this continuum, and adoption of the view could help to overcome a rather stereotyped perception of the differences between public and private space.

This chapter and the one that follows will grapple with how the privatization of public open spaces has dealt with the critical issue of public access of two types -- ordinary, day-to-day use and programmed use, respectively. This chapter will examine the design aspects and law-enforcement measures that shape everyday use and the next chapter, concerning with organized activities within public space, will deal with the legal aspects of public access and administrative aspects of management. It will be examined how privatization cases attempt to reconstruct the qualities intrinsic to public space in a social context of constraining realities -- simplistically put, the decline of shared norms of public behavior

and public life. Emphasis will be given to speculation on an operative definition of public access in relation to accompanying working instruments.

The first section of this chapter examines the conventional notion of public access: Idealized concepts and realities will be contrasted with parks and streets, two ideal types of public space, and various forms of limited public access often practiced in a real world will be laid out. The rest of the chapter turns to cases, discussing how the public access question is addressed in relation to a definition of 'clientele' -- a definition which influences decisions on program, physical design, and security.

4-1. Controlling Public Access: Inclusive vs. Exclusive

What constitutes publicness?: The idealization of parks and streets

Public access encompasses three elements: physical accessibility, the breadth of clientele represented, and methods of policing. Public space is often associated with one extreme of these elements; that is, constant and easy access, availability to all members of the public, and 'self-policing' with the support of public authority. Private space is associated with the other extreme; access by the public is denied or limited, availability is narrowed to a specific clientele, and access is controlled by tight

enforcement measures. More simplistically put, public space is inclusive and private space is exclusive; public space is free and private space is controlled.

This is a contrast of the conventional definition, a simplification of reality. Certainly, private space conforming to conventional attributes often does exist in various private properties that are exclusively open only to private use. However, public space, with all its conventional attributes rarely exists even within a public property for public use. Making the distinction more complicated, there are many private properties which assume some public access because of their use by the public. Thus, in reality, there is a wide spectrum of public/private space in terms of public access, regardless of their property ownership.

Conventional ideas regarding public access, then, represent an ideal notion rather than reality. This idealization of public space is particularly strong in American society.¹ American public space was consciously created as an antidote to the private expansion that prevailed during the growth of capitalism American

¹ An ideal image of sociability in public space is not peculiar to an American society but is often shared in the Western world. Public space is, by definition, to be accessible by everyone and the experience is to be shared by everyone. For instance, one study of European public spaces concludes that regardless of social or age groups, people usually share an ideal image of public space as a setting of open sociability (The Main Square, p 19). Recurring advocacy of a public ideal in American public space is, perhaps, attributed to a disparity between the ideal and reality, which is much greater in an American society than others.

cities experienced in the 19th century, and a public ideal was consciously invented and demanded by the creation of American parks.

Consider the ideal manifested by 19th century park advocates, as Olmsted described the ideal:

"... in this eighteen hundred and seventieth year after Christ, you will find a body of Christians coming together, and with an evident glee in the prospect of coming together, all classes largely represented, with a common purpose, not all intellectual, competitive with none, disposing to jealousy and spiritual or intellectual pride toward none, each individual adding by his mere presence to the pleasure of all others, all helping to the greater happiness of each. You may thus often see vast numbers of persons brought closely together, poor and rich, young and old, Jew and Gentile."²

Not only were public parks meant to serve every section of the population, but they were also meant to produce moralizing effects. The view of public parks as instruments to achieve egalitarian ideals, to ameliorate class lines, and to uplift moral order exhibits the progressive, highly idealistic mind of the 19th century American. Public parks were regarded as a way

"to bring a constructive and fruitful order to human life among the lower classes in emerging industrial cities of the second half of the nineteenth century. Central Park was not only intended as a source of joy and relaxation for the middle and upper classes, to whom it offered a rural experience within the city; it was also to be an instrument, perhaps the crucial instrument, in the imposition of moral order on the city's disorganized poor. It expressed not merely a topographical or an architectural or horticultural vision, but a vision of the

² Olmsted, F.L., Public Parks and The Enlargement of Towns, The American Social Science Association, 1870 (Reprint edition 1970, Arno Press Inc.) p 18.

constituent institutions of a good society."³

Despite these ideal views, the original parks of the past century are, in reality, far from contemporary notions of publicness. Physical access is quite limited by modern standards; parks are sanctuaries, separated from their surroundings by such physical means as fences with gates that are locked according to curfew standards. The democratization of parks was effected by making them open to public and free of charge, regardless of social characteristics.⁴ However, parks were meant to bring up the standard of the lower class -- their tastes and public behaviors-- not to represent diverse needs as they existed. (Cranz, 1983)

Early attitudes toward park policing were a combination of idealism and realistic policies. On the one hand, self-policing in parks was envisaged optimistically. Stated by Olmsted:

"No one who has closely observed the conduct of the people who visit the Park, can doubt that it exercises a distinctly harmonizing and refining influence upon the most unfortunate and most lawless classes of the city, an influence favorable to courtesy, self-control, and temperance."⁵

³ Starr, Roger, "The motive behind Olmsted's park," The Public Interest, No. 74, Winter 1974, pp 66-76.

⁴ The idealization of public parks in America shows a contrast to European public parks: European parks, whether new ones or royal parks opened up to public, were often created with a specific clientele group in mind -- e.g., in Paris and in London -- and an entry fee was often charged unlike American public parks.

⁵ Olmsted, F.L., Public Parks and The Enlargement of Towns, p 34. An element of public education in parks was continuously fostered in later parks.

Self-policing was not, however, assumed naively but well supported by elaborate measures to maintain law and order. Rules and regulations over public use were specific about behavior and conduct in parks, spelling out not only general use but also appropriate manners and costumes. And, elaborate policing measures were employed, practiced by park guards specifically trained for park patrol. Social leadership and guidance, rather than crime prevention, were often emphasized as a key role of park guards, as illustrated in the following park police regulations:

"The work of a park policeman is essentially different from that of a city patrolman. Violation of the park regulations is rarely of a criminal nature, or due to malicious conduct, but is usually owing to the heedlessness or thoughtlessness of people of good intentions. The chief work of the park policeman is, therefore, to warn, check, guide, inform and instruct park visitors, and not to arrest and punish, except for some willful and flagrant misdemeanor... All necessary orders, directions or advice should be given with becoming courtesy... A police officer doing duty on parks must therefore be a man of good judgment, even temper, tact and more than average education and good manners. Possessing these qualities, he can, by exercising them, become a most efficient official, for he will act with leniency where unnecessary firmness is uncalled for, but will be firm in the enforcement of rules, where leniency would be misplaced and unjustified."⁶

Another source shaping the conventional and ideal notion of public access comes from 'streets'. While parks had played a key role in shaping the physical, social, cultural, and aesthetic form of cities throughout the building of modern cities, streets were the focus in the 1960's as a prescriptive model for saving the city from barren, sterile public life. Streets have since been

⁶ An 39th Annual Report of Minneapolis Park Department. pp 66-67. Requoted from A Manual of Parks, Weir, pp 769-770.

considered as a viable concept to the restoration of the public environment. The inherent qualities of streets -- openness, availability, easy access, spontaneous use -- have been praised and conscious attempts have been made to recreate these qualities. However, as noted by many scholars (Jacob, 1961, and Gutman, 1978), these qualities are possible because of territorial components "embedded" in the streets -- in terms of physical, social, and cultural spheres. Streets are often the physical representation of coherent, somewhat tightly knitted community solidarities, qualities which can not easily be implanted without such social and cultural support. Accordingly, the sociability that takes place on streets is that of 'privatized' space; the qualities of the space are enjoyed by those who share tacit knowledge about that specific environment. Lofland (1976) aptly distinguished the socialization on territorial streets as 'locational privatization' from what she described as 'symbolic privatization', exercised by people to maneuver through a truly public setting -- 'a world of strangers' in her definition.

The privatized aspects of streets are sometimes pursued intentionally, with the hope to produce the ideal attributes of streets. This is best illustrated in the making of private neighborhoods, in which the actual ownership of streets is deliberately transformed from public into private. Several examples of privatizing public streets in St. Louis (Newman, 1980) achieved notable success in upgrading the physical condition of

streets, increasing use intensity as well as in much improved security.

What kind of exclusion is permissible?

The ideal attributes of public access are rarely realized even within such ideal types of public space as parks and streets. These spaces are idealized because of their potential to realize "publicness" rather than because of their actual performance. Some limited public access is often practiced in order to make these public spaces workable within social constraints. The next question becomes focused on the kind of exclusion permissible and the circumstances under which exclusion is acceptable. Or, conversely, what kinds of exclusion are problematic under particular circumstances?

Undoubtedly, the acceptability of limited access is judged socially, as a reflection of prevailing social values and sentiments. The explicit exclusions which often prevailed were justified by social/cultural norms and custom, political arrangements, or proprietary arrangements at the time. In fact, public spaces currently praised for their capturing of the essence of public life are often the products of explicit exclusion. The Greek agora, the ultimate ideal of public space, had a sharp division between political and commercial sections, demanded even by Aristotle to be "set at a proper distance one from another, so

as to keep away from the place public affairs are discussed in those residents deprived of citizenship." Public streets and parks used to be regarded as improper places for women to socialize independently until the last century.⁷ More devious kinds of exclusion, such as creating a public park for a certain social class, was widely practiced in European countries. Taking a classic American example, the town commons in New England, under communal ownership, had been exclusively used only by households or special permit holders who obtained rights of grazing or raising stock in the commons.

Exclusion in modern days is often implicit, touching upon socio-psychological relationships more than social and institutional arrangements. That is, as various publicly usable spaces are available and public sentiment is more liberalized, explicit contention among social groups is substituted by subtle class relationships. Three kinds of implicit exclusion are typically addressed, all primarily concerned with how to enhance public access to private space.

The first kind is physical exclusion with visual access. Spaces of this character are expected to have greater access because of their visibility, but physical access is limited by private right. Take the case of a private park, visually attractive but physically

⁷ Cranz, Galen. "Women and Urban Park: Their Roles as Users and Suppliers of Park Services" in Building for Women, pp 151-171.

locked, such as Louisberg Square in Boston or Gramercy Park in New York.⁸ In Louisberg Square only a portion of its park is fenced off and the square is tucked in a rather secluded neighborhood, which stirs a less openly negative reaction. Whereas, the entire 2-acre area of Gramercy Park is fenced off by black wrought-iron railing and its surrounding has been transformed from an exclusive residential neighborhood into a busy mixed use area, which gives it much more public exposure. Only residents of the surrounding 66 properties, original holders since 1831, have keys to the gate. Its use is completely prohibited to the public, with occasional exceptions including a spring flower contest and a Christmas carol festival. The operation is much like the aristocrats who opened their estates to the public on special occasions, as a demonstration of their generosity. The rules of the park's use, instituted at the time of its building, are still in effect, spelling out how to behave in the park in 10 rules, much like the Ten Commandments. Many, including Eleanor Roosevelt, have advocated the park's opening to the public, but all proposals have failed at various times. When the park was designated a historic landmark in 1966, its current condition became permanent. Ambivalent feelings about the park are often expressed: passers-by, disturbed by the park austerity kick the gate, and park inhabitants carry mixed feelings of pride in the proprietary care for the park

⁸ These are only a few visible examples. There are many private parks that are protected by private covenants securing use of spaces only by neighbors who have legal holdings of the space.

and guilt over its exclusiveness.⁹ One writer expressed this mixed feeling eloquently, when she was allowed to enter the park as a patron of a neighboring hotel: "I feel more a part of Gramercy Park now, as a guest at the hotel, than I did when I was a New Yorker."¹⁰

If a locked park like Gramercy Park is preserved as a historic relic, there are abundant modern examples exhibited in the indoor spaces of modern corporate buildings. Enveloped in a glass wall, they present a similar characteristic -- visually permeable but not easily penetrated physically. Relative social isolation is produced by more visibility: By taking away visual barriers, expectation gets greater with increasing anxiety (Sennett, 1974). What these spaces exhibit is a privacy in the disguise of publicness.

The second kind of exclusion is conditioned availability. Some spaces with operational hours fall into this category: for example, private parks or private spaces with easements for public right of way. Operational hours are often justified for security and maintenance reasons. Those of private parks receive less criticism, for example, Paley Park or Greenacre Park in New York are exceptional examples of complete private open space provided in

⁹ New York Times, September 14, 1968 and Park East, 1965, p 5.

¹⁰ Mazur, Gail. "An Oasis of Elegance," The Boston Globe, March 15, 1987.

a business district, being appreciated for their benefits despite the locking of the gate after sunset. In a similar vein, putting a fence around privately provided spaces is generally considered acceptable: Only the design aspects such as height or spacing between the bars of a fence railing are subject to public regulation (Plazas for People, 1976: p 44).

Operational hours practiced in public spaces connecting to other uses -- indoor public spaces like skyways, lobbies and central spaces of buildings -- are often of more concern because of their curtailed accessibility. For example, an extensive skyway system like that in Minneapolis is experiencing considerable management difficulty in keeping the system fully operational after business hours: Private properties lock their entrances after business hours for maintenance and security reasons, making the system discontinuous (Morphew, 1985).

Conditioned availability is also practiced in publicly owned spaces. As mentioned earlier, public parks created in the 19th century were meant to be fenced-off and closed after sunset. This tradition disappeared for the most part in modern times and, in some cases, even fences and gates were eliminated, e.g., Washington Square¹¹ in New York. Bryant Park, whose gates were demolished in

¹¹ Although the elimination of fences was widely praised at the time, it turned out to be the source of difficulties: The absence of fences permitted muggers to make their escape across the park's lawns and onto the neighboring streets (Simon, Donald E. "A Prospect for Parks", Public Interest, fall 1978). There has been

the 1950's, restored a curfew in the 1970's when crimes became serious, by blocking gate areas with barricades at night.

The third kind of exclusion, most prevalently practiced in the contemporary world, is perceived exclusion. In this case, actual physical access by the public is not officially denied but the public's perception of accessibility is negatively influenced by subtle measures of control and a character of a particular space-- its tone of sociability, image, and underlying class implications. Downtown corporate buildings of mixed use draw criticism because of their encapsulating quality -- dissociated from the outside world, however enchanting and opulent the physical quality they create. Allan Jacobs (1980) observes class implications and criticizes the exclusiveness of corporate buildings in downtowns as:

"The new downtown, it seemed to me, had a special message for the poor and the less-than-affluent. It was saying, more than the old downtown ever could. "We'll let you come here and shop and look, and enjoy, and take a picture on a Sunday afternoon, but only on our corporate terms, and only where we say... I didn't smell anything in the Citicorp complex. I didn't see any poorly dressed people, either buying or selling. If I bought anything, it was expensive. Citicorp was all very new and clean and safe, but it wasn't very exciting. It turns its back on an active, exciting city. It defies the community that has historically been associated with the street. It isn't really public in the sense that streets have been public."

Shopping malls, perhaps the most popular of contemporary meeting places, suggest a perfect setting for perceived exclusion. As richly described by Kowinski (1985), shopping centers, creating

an attempt to create a new fence in the early 70's (The New York Times, April 6, 1973).

enclosure, protection, and control, offer the quality that:

"the place where people could walk and see other people along the tree-lined internal streets. They didn't lock out the kitsch and kin of human tastes and interaction; they enclosed them in a protective embrace. They didn't embody visions of the ideal; they fulfilled pedestrian fantasies."

The implantation of shopping malls in the city center in festive marketplaces under urban revitalization is under similar criticism. Their contribution to economic development in city centers notwithstanding, these spaces are "a city within a city" where the public exists only as consumers not as users.

Several forms of limited public access identified above suggest that more delicate measures of controlling public access are invented in a modern situation in which the expectation of public access is more emancipated. These measures are devised to cope with the dilemma of dealing with both liberal expectations for public access and urgent control problems. As the form of exclusion is transformed from explicit to implicit one, the focus of the public access issue is also transformed. Class relationship is still a key factor that shapes concerns over public access, but it is more implicit; instead, the socio-psychological relationship becomes a key concern, often joined by cultural criticism on the qualities of public space in modern times. Publicly used private spaces become a more critical source for the popular conception of public open space -- more securely controlled, actively used, but consumer-oriented spaces. These facts create a backdrop for the public access issue within privatized public spaces.

4-2. Clientele Definition in Privatized Open Spaces

Turning to the case examples, each of the four share specific attributes. All are fairly large open spaces that occupy one to several blocks in downtown areas, all are publicly owned and jointly developed by the public and private sectors, and all four fall under private management. Is another kind of 'limited access' defined in public open spaces that are privatized? In what ways is public access addressed in these cases? This section will examine these questions in terms a clientele definition and its influence on the approach to programming.

Clientele definition is usually addressed in rhetorical, rather than specific terms in the development process of privatization: Encompassing all the public is usually advocated, although the definition who comprise of the public is rarely spelled out. Users are delineated often by the 'social acceptability' of their use motivation, rather than by social characteristics such as age, sex, or income group. The categorization of users falls generally into two groups -- those with acceptable use motivation and those with a motivation considered undesirable. Another assumption often made is that the differences in user needs of open space amenities, if any, are negligible. On the basis of this assumption, the programming approach is not focused on the differentiation of user groups but rather an accommodation of the commonly shared needs of most people.

Apparently, these approaches derive from existing conditions of downtown open spaces in terms of dominant user groups, their use patterns, and the troublesome condition of undesirable usage. Typical features of use patterns in downtown open spaces include: use intensity generally peaking during lunch hours and the greater proportion of users are comprised of young, middle-class office workers who frequent the open spaces in vicinity of their workplaces, as well as shoppers and tourists.¹² A fluid, shifting, and transient character of use prevails within these downtown open spaces, reflecting the characteristics normally associated with downtown use -- offices, shopping facilities and tourist attractions with little residential use -- as well as few user attractions within the open spaces. Even frequent visitors stay only for short periods of time.¹³ In contrast to the transient use patterns of ordinary users, undesirable users exhibit a more tenacious use pattern -- patronizing regularly, colonizing, and even making "home" territories.

The scene at Bryant Park most vividly depicts how these patterns take place and how they interact with:

¹² The extent of use by shoppers and tourists varies, influenced by visibility, accessibility, and amenities of a space. For example, Bryant Park hosts a relatively small portion of shoppers and tourists because of its poor visibility and few attractions. Bryant Park: Intimidation or Recreation, Project for Public Spaces, Inc. 1981, p 11.

¹³ Copley Square, located in a pedestrian crossroads, exhibits this tendency. According to a public opinion study done in 1983, 80% of the 223 sample population stay in the square no longer than 15 minutes.

"Activity starts in the Park as the first commuters step out from the Port Authority Terminal at about 8 A.M. Many of them pass by Bryant Park, and a few walk through on the way to work, occasionally stopping to read a newspaper, smoke a joint, or drink the coffee they have bought down the street. Most early-morning visitors are men. There is continued light use of the Park for sitting, reading, smoking during the morning by many different types of people. Few women appear in the Park at this time. As noon approaches, activity intensifies. The indigent who have slept there are up; a group of people who hang out most of the remainder of the day arrive; dealers position themselves for the lunchtime trade...

The intensity of lunchtime activity during good weather appears to be directly related how well the Park can seat visitors. In the late spring and early summer, before the sun causes outdoor activity to be undesirable, the Park reaches its peak use. It is cult to find a bench to sit on. The balustrade functions at capacity, with people sitting on the railing and others standing nearby to talk with them. The lawn area is packed with people sunning, eating, reading. Chess players position themselves on the upper terrace and attract their regular crowd of spectators. The Park hums. Along with this intense use of the Park comes intense marijuana dealing at the major access points and walkways. While marijuana dealing fluctuates according to the intensity of police surveillance, it is ever-present and visible. At this time of the day, the indigent population is less obvious. Some who feel uncomfortable with the influx of lunchtime users head out into the streets. Others move to the south-west corner of the Park, where they are less noticeable, hidden behind a tall shrub...

As the intensity of the lunchtime activity subsides, the number of visitors begins to level off. Tourists, shoppers, the elderly, and the non-working become the main users. Use of all areas of the Park remains fairly constant. The bookstalls have been successful, remaining active until closing time. In the late afternoon, there is a slight rise in attendance as people leaving work pass through the Park on the way home. They sometimes stop to relax for a couple of minutes, wait to meet a friend, buy marijuana, or watch some of the entertainment that was offered last summer."¹⁴

Common-sense programming directions that have been drawn from the existing use patterns include the strong encouragement of desirable

¹⁴ Bryant Park: Intimidation or Recreation, Project for Public Spaces, Inc. 1981, pp 15-16.

activities and the firm deterrence of undesirable activities. These directions are obviously no target for criticism based on principle. However, differentiating the desirability of use can be problematic. For instance, ways to deal with the park's users of lower status -- the homeless, the vagrants and bag ladies, whose presence, if not intimidating, is often viewed as embarrassing, requires delicate consideration. Touching upon emotional issues, these concerns tend not to be addressed explicitly in a public discourse.¹⁵ They require, however, critical imperatives for making detailed management decisions.

More than any other programming issue, establishing a restaurant facility illustrates delicate decision-making. The introduction of a commercial operation within the relatively defined open space brings with it whole new question about the class implications of such change in use. The formation of social enclaves is observed quite commonly in any open space. However, in contrast to the changing and flexible social organization that takes place normally in an open space setting, commercial use of a built space creates concerns relating to the possible fixation of social arrangements into a physical organization. Commercial use also means, at least, some categorization of general park users into those who are commercial patrons and those who are not.

¹⁵ A neutral word like 'social mix' is used to express this concern. The user response in Bryant Park shows that 16% of respondents regarded 'social mix' as problematic in the park, while 22% of them expressed concern about the presence of "undesirables." Ibid. p 12.

Decisions on various aspects of a commercial establishment of privatization cases reflect these concerns. The delicate balancing between quality-control and non-exclusive operation is usually emphasized: the operation is to be neither too extravagant nor too shabby, neither pricey nor fast-food, not exclusive but inclusive. Modest but quality service is desired, and the menu of the restaurant is selected as "light and simple" food at reasonable prices.¹⁶ Furthermore, the diversification of services are sought: take-out service is added and food vendors serving fast-food are included in order to broaden the range of food services. These food vendors are, no doubt, under the control of a private management organization, an arrangement that ensures that the service offered complements that of the restaurant and that the operation matches standards of quality and neatness set by the private management.

A reduction in the restaurant's scale resulted in each of the case examples, as explained earlier, reflected not only the concern over the private sector's encroachment on public land, but also that a large-scale restaurant meant a too-high level of quality that would be exclusionary. For example, the restaurant originally proposed for Bryant Park was opposed on these grounds: the high-class image established in the operation of the Tavern-on-the-Green restaurant in Central Park by the same restaurateur, W. LeRoy, aroused acute

¹⁶ Pioneer Courthouse Square, "The Request of Proposal of a Restaurant Concessionaire," 1982.

concern.¹⁷ Strong criticism of the social implications of this proposal were sensible in view of several problematic features of the proposal. The restaurant proposal of Bryant Park argued that there would be no strict quality-control by saying it had no 'dress-code', and that no environmental impact would be felt, predicting most patrons would come by car or taxi and the proposal put putting two restaurant entrances at the street side with no entrance facing the Park.¹⁸

In all cases, particular attention has been given in finally deciding on the sitting of the restaurant/cafe in relation to the streets and to the open space, since a built component, however unintended, creates some strategic relationships among parts of an open space. Locating the cafe/restaurant adjacent to potentially active street, is a common response, with entrances open to both the street side and to the open space side. The inevitable physical separation that results between the eating area and the rest of open space is still resulted. The serving of drinks, introduced to improve the quality and profitability of the food

¹⁷ One anecdote of an incident encountered by a journalist illustrates how a high-class operation intimidates users: "A few nights ago I went to the Tavern and tried to order a cup of coffee. The waitress was polite but firm. "When it's crowded like this, she said, gesturing away from a cluster of empty tables, we don't serve coffee. Just cocktails. Would you care for a cocktail..." But LeRoy doesn't really want to talk about prices; with coffee going for \$2.35 a cup at Tavern you can hardly blame him." "The Cost of Good Intention," V. Voice, June 4, 1985.

¹⁸ Bryant Park, "Environmental Impact Assessment of the Proposed Restaurant," 1982.

service as well as to increase afternoon and night time use, raised a special problem in Pioneer Courthouse Square, since such service requires a rather explicit separation.

The very presence of a building implies possible exclusion -- physical, social, and psychological. The consideration given to its establishment in privatization cases exemplifies an uneasy recognition of such implications. The quality of such an establishment inevitably attracts patrons of particular social characteristics. This pattern is in evidence in the two outdoor cafes currently operated in Bryant Park. The cafe in front of the Public Library building, operated by a high-quality private concessionaire (and under contract with the Parks Department, not with the BPRC) attracts well-dressed patrons by way of its neatness and attractive design; whereas, the cafe within the park, under the supervision of the BPRC, is shabby in appearance, with rusty metal chairs and tables, and scattered paper servings, and is relatively less used.

A building means easier control, and is less susceptible to misuse by operating only during certain hours and maintaining physical security measures such as locks. The public restroom is a perfect example. Public restrooms are no longer provided in Bryant Park, although they used to be a part of park facilities. (They had been installed in Bryant Park and in Pershing Square in the 1930's.) Instead, they become part of the restaurant facility, and are still

usable by the public but under surveillance. In the Copley Square example, the idea of including public restrooms was simply dropped when only a temporary restaurant structure was allowed.

4-3. Instruments of Use Control

Privatized open spaces exhibit both a pragmatic approach and a sensitive recognition of the need to manage potential cultural or social clashes. This sensitivity is further carried to designing physical and law-enforcement features.

Physical design

Making the control effective yet natural and subtle, is a common issue in cases of privatization. Consistently addressed in physical design is the combination of increased surveillance and the fostering of inviting atmosphere. Three key criteria--visibility, legibility, and inter-related quality between open space and streets -- have been addressed in all cases, shaping an overall spatial organization, territorial arrangements, circulation patterns, periphery definition, access points, and landscaping details.

Opening up a central portion of the open space, with territorial enclaves arranged along its edge, is a prevalent spatial

organization of the examples. This organizational plan is hardly new: As evident in the existing designs for Pershing Square and Bryant Park, it has been the favored organization for urban space. However, different motives suggest the same organization: While monumental grandeur was the intent of historic designs, composed by axial views of adjacent public buildings and a grand sense of space, more practical motives underlie contemporary designs. Providing a commanding view of the overall space both to users and those in surveillance, good internal circulation, and connections between activity enclaves to street activities are such motives. The central space in the new designs is meant to be accessible and to be used extensively, unlike those in older schemes, to which access is often restricted.¹⁹ Naturally, much freer internal circulation is now encouraged: criss-crossing in Copley Square and free crossing in Pershing and Pioneer Courthouse Square by the lessening of geometric directionality within their central spaces. And Bryant Park introduced more cuts-through the central lawn by using punctuating shrubs surrounding the space.

The emphasis on visual and perceptual access represented in the final designs for the case examples is noticeable, despite physical access was vigorously advocated during the programming process. Creating deliberately access points is a case in point:

¹⁹ For example, the redesign of Pershing Square in the 1930's was aimed to free the central portion of the square from frequent uncontrollable gatherings in order to portray a clean image to the booming surrounding businesses.

Copley Square at four corners, Pershing Square at four corners and two mid-block entrances along longitudinal edges, Bryant Park at three corners and two mid-block corners and Pioneer Courthouse Square at four corners. These entries are not exactly gates into the space but are intended to guide access routes. Thus, explicit barriers along edges are avoided and sophisticated design measures are adopted, not in order to separate the open space perceptually and visually from streets, but only to limit direct physical access from streets. Low walls and fences, a barrier of intense activities such as farmer's markets and vendors (e.g., Copley Square and Pioneer Courthouse Square), and plantings, are popular methods. They emphasized creating a 'sense' of boundary, rather than an actual boundary.²⁰ One popular strategy for increasing visual and perceptual access is the setting up of an open space improvement district, incorporating the area of surrounding streets and implementing designs for similar pavement and landscaping elements. This idea, particularly welcomed by the design community, was adopted in Pioneer Courthouse Square and partly in Pershing Square.

One notable exception to the general principle of softened periphery definition is the Pershing Square case where the street and the square are actually separated by a landscaped, but raised

²⁰ This result shows a compatible solution to a regulation regarding a street interface of private office plazas. Open space guidelines of office plazas in New York City, for example, set that 50% of the street frontage of a plaza be opened up.

promenade. The sidewalk is raised more than the height of a person at its highest point, creating a gateway underneath. In this case, the overall design theme, that is, the creation of an "undulating" surface, ruled over the generally recommended principle of making streets and open space on the same level. This seemingly independent solution is possible in this case, because other security measures are extensively provided.

The techniques of landscaping are greatly exploited in complementing informal controls of open space. Tall trees gained renewed popularity to provide "greenness" and to improve the micro-climatic condition as well as to provide uninterrupted visibility within the open space itself. Design guidelines strongly discourage the use of hedges for security reasons. (Refer to Appendix II for the design guidelines.)

Two new features -- moveable chairs and softening features, such as lawns and flowers are worthy of note, particularly in Copley Square and in Pershing Square. As symbolic landscape elements, their use in public spaces connotes freedom, spontaneity, and "civilized" use. In a situation where almost obsessive consideration is given to security and maintenance concerns, the use of these features is remarkable. Nonetheless, without the assumption of extra care and guidance of use as well as greater investment in maintenance and surveillance, the introduction of these features would not have been possible.

Enforcement of rules and regulations

A strengthening of law-enforcement measures underscores the programming direction of privatized case examples. The full-fledged use of various types of authority is sought, as the presence of more patrols, maintenance crews, concession employees, and private security guards (with the exception of Copley Square) are expected to exert greater surveillance, in one way or another. In combination with the authority of a private management organization in regulating behavioral conduct, and keeping the use of the space orderly, a private security force is a powerful tool to enforce the rules and regulations drawn up by a management organization. (Refer to chapter 6 for a detailed discussion of rules and regulations.)

The manifested intent of designing the operation of a private security force in privatized cases is to make it to be unintimidating and responsive to some public concerns. The role of private security forces is different from that within private properties. Their role in public space is more symbolic; uniformed but unarmed, they guide and help users and patrol regularly. They do not have authority to issue summons or make arrests, but may call for police in emergency situations. Other prime tasks of these security forces include enforcing the rules and regulations concerning use, such as restricting vendors or group gatherings without permits, making them the guardians private management's

interests. The presence of authority has proven to be effective in curtailing crime or undesirable behavior. The impressive drop in the crime rates at Bryant Park was cited in Chapter 2. Pioneer Courthouse Square, which has operated a private security force, has not experienced any significant crime with the exception of petty vandalism during four years of operation.

Conclusion

The programming and design of privatized open space exhibits an accommodation between the ideal notion of public access and realistic social controls. On the surface and in public discourse, the public ideal is advocated, but the rhetoric is focused on more culturally acceptable issues such as security, maintenance, livability, and vitality. The issue of class distinctions, downplayed in public discourse, plays an imperative role in making detailed management decisions, especially in the creation of a program for open space that includes a commercial establishment. While physical access is advocated, the final designs for privatized open spaces emphasize visual and perceptual access. Law-enforcement measures, though meticulously designed and operated in ways that do not intimidate users, are strengthened by the addition of private security guards.

A combination of coercive and non-coercive measures of social

control is a distinct characteristic of privatization. A strong analogy can be made between contemporary privatized spaces and the parks of the 19th century. The early parks were loaded with idealistic notions of democratization of the public spaces, but they carried the full support of law-enforcement measures instituted on the basis of hard-headed approaches to urban problems. One critical difference in the cases of privatization is the current recognition that public space can hardly ameliorate larger social issues, but rather can only mitigate the negative symptoms that such larger social problems place on these urban spaces.

How privatization affect the public access issue is to be viewed is, inevitably, a normative question. At one extreme, privatized open spaces may be regarded as exploitive of prevailing concerns for security and maintenance problems as the private sector's excuse to bring in such class-implicated programs as restaurants in the park. Such amenities, by nature, imply a more controlled environment, however subtle and concerned their design and operation. On the other hand, new programs devised by the privatization of open spaces arguably resist lack of vitality in current downtown open spaces. In the latter view, issues of privatization become operative, rather than ideological questions.

In the end, the privatization of open spaces is accompanied by operative changes as well as seeds for ideological change. Many of

the instruments of control in privatized public spaces have the potential to result in limited public access -- by way of perceived exclusion, conditioned availability, visually permeable but physically restricted exclusion -- attributes not normally associated with public open space. Yet it has also been shown in the examples that privatized cases have exhibited great sensitivity in their handling of new features. The idealized notion of public access conventionally held, may, in fact, change as a result of these actions, transformed into a working notion that takes into account the realities that call for some form of control.

Chapter 5

Public Use: Changing Use Programs

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Constitution of the United States:
Amendment I. (1791)

Public open spaces have long been considered as a public forum to accommodate diverse forms of public expression -- political, religious, community and civic events, cultural events, and commercial activities. These activities, with their dynamic vitality, attract people into public open space, providing them with a tangible experience of a public city. As spontaneous as public events and activities may look, they are present as the result of an interplay of complex factors -- proprietary interests, legal doctrines concerning with public use, public regulations, internal policies by an authority in a management position, as well as the users' initiatives to pursue public expression.

Turning the management of public open space over to a private management organization brings with it changes to these factors, which may in turn result in a change in the contents of activities. The privatization of public open space poses several fundamental questions on this regard. The first pertains to the legal status of privatized spaces in which the public space, as a whole or in part is leased to a private management organization. The protection of fundamental rights within these spaces is brought into question. Moreover, the introduction of a commercial component poses a pertinent question in regard to a functional interest in profit-making. Second, private management, even when overseen by non-profit organizations, may exercise its discretionary power by regulating functions of public use through the issuance or non-issuance of permits. Related to this second question is the impact of the expanded managerial capacity typical of a private management organization on the overall use of public space.

The first section of this chapter examines the basic principles of public expression within public spaces, that are supported by public authority, through reviewing legal cases and regulations of public park management. The types of discretion a private management organization may exercise within the bounds of public regulations and the issues involved in regulating the manner of public expression will be discussed. The rest of this chapter will examine how private management, with its own policies and

procedures, influences the operation of public use. Two privatization cases will be analyzed: Pioneer Courthouse Square in Portland and Bryant Park in New York.

5-1. Public Expression: Discretionary vs Unlimited

In American society, where pluralism and democracy are valued as intrinsic merits, public expression in public space is generally guaranteed. An exemplary statement describing this principle reads:

"Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purpose of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied."¹

As indicated, 'orderly' exercise is a prerequisite to the exercise of fundamental liberties, and thus, some form of regulations is naturally required. Historically, the appropriate content and practice of public expression has been defined in the shifts in

¹ Justice Roberts wrote for plurality in *Hague v. CIO*, 307 U.S. 495 (1939) which involves the exercise of constitutional rights in a private company town. The quotation is from Process of Constitutional Decision-making: Cases and Materials, Paul Brest, 1980 Supplement: p 395.

public custom and control. Generally, American society has evolved, to exhibit greater tolerance for accommodating various types of public expression, by articulating legal doctrines related to civil rights. However, legitimate regulation has not been completely defined and has become ever more complicated, as diverse types of public spaces and of public expression emerge in a modern society.

Issues over the practice of public expression and of free speech within public space include; (1) the restriction of public expression in public space, (2) the definition of "public forum", that is, differentiating the traditional from the non-traditional forum and defining "private performance" of public functions, and (3) principles of regulation.

The restriction of public expression in public space

The interpretation of constitutional rights has grown to rule out any restriction in regard to imposition by a public authority on the contents of public expression.² This makes a marked difference

² Certainly, this does not mean absolute protection to every kinds of public expression. The exercise of the constitutional rights run only against the State, not against every individual who may unwillingly encounter unconsenting public expression. For this reason, offensive conducts -- most notably obscenity, racial discrimination -- are subjected to regulation. Nevertheless, defining what specific expressions constitute these prohibited activities is often not so clear-cut. The definition is subject to change as public attitudes change: racial discrimination is a

from practices in the past, which used to favor public regulation over public incidents. In early 1895, a preacher was convicted for making a public address on the Boston Common without a permit, and the decision was unanimously sustained by the State Supreme Court. The decision read that the federal Constitution does not accord a citizen the right "to use public property in defiance of the Constitution and laws of the State and supported that the government could determine the circumstances of public assembly."³ Often, inconsistent views used to exist between law enforcement and court decisions in the past. For example, Pershing Square in Los Angeles (known at the turn of the century as Central Park of Los Angeles) presented an ambiguous application of municipal ordinances to the exercise of free speech.⁴

As cited earlier, the pioneering case, *Hague vs. CIO*, which ensured free access to streets and parks -- the so-called traditional forums -- was made in 1939. This case made it clear that the contents of public expression cannot be controlled by stating that

primary case in point. Also attitudes toward sexual preference have been radically changed: during the 30's it was reported that gay people were arrested in Bryant Park.

³ The case is *Commonwealth v. Davis* 162, Mass., 510, 1895.

⁴ The city that tried to ban the then flourishing spontaneous free speech on a band-stand in the Park made several arrests. One of the arrests was the English journalist/socialist, Gaylord Wilshire in 1900. He was judged in the court to have broken no law. In response, a new ordinance was drawn up requiring a permit to hold 'any' public debate. Despite the ordinance, the next arrest of the same person on the same charge was discharged in the court again. (Fabulous Boulevard, Ralph Hancock, pp 96-101)

"the individual liberties secured by the Constitution to those who wish to speak, write, print or circulate information or opinion may not be abridged by regulations in the interest of the public safety, health, welfare or convenience."⁵ This case set the precedent for several significant issues: It is the manner of conduct not the contents of civil liberties that is subject to regulation and any problems expected to arise from the exercise of the liberties can not be used to abridge those rights.⁶

Differentiating public forums

Public expression in public space is, then, not to be censored based on its contents. Then what is public space? Can access to public space be made on condition, according to the characteristics of the public space in terms of property ownership or types of use? Two kinds of public space are in question -- non-traditional forums and private properties that accommodate public use. The non-traditional forum is defined as public property under definite

⁵ Hague v. CIO 307 U.S. 495 (1939).

⁶ Municipal ordinances which forbade the distribution of literature of any kind on streets to prevent littering so as to keep the streets clean and of good appearance were held void in the 1930's in several cases. The cases made an argument that "any burden imposed upon the city authorities in cleaning and caring for streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press ... This constitutional protection does not deprive a city of all power to prevent littering ..." (Paul Brest, Process of Constitutional Decision Making: Cases and Materials, 1975: p397)

custody such as schools, public buildings, Capitol grounds, military bases, and jail houses, etc. Publicly used private properties are shopping centers, airline terminals, etc. It should also be noted that a property leased from the public sector is still regarded as private in terms of the custodianship. These spaces are characterized as a mixture of specific property interests and public use.

Inconsistent principles have been applied in legal decisions and accordingly, dissenting views have prevailed. Proponents for conditioned access to non-traditional forums and private properties argue for the interests of property holders. In the case of a 1966 protest on the ground of a jail, the court decision said:

"The State, no less than a private owner of property, has power to preserve the property under its control for use to which it is lawfully dedicated ... [Petitioner's argument] has its major unarticulated premise on the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however they please ... The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose ..."7

A similar line of argument was made by the jury who dissented from the majority court decision on a case which involved picketing in a shopping center, Logan Valley Plaza:

"Logan Valley Plaza is not a town but only a collection of stores. In no sense are any parts of the shopping center dedicated to the public for general purposes or the occupants of the Plaza exercising official powers. The public is invited to the premises but only in order to do business with those who

⁷ The case is *Adderley v. Florida* 385 U.S. 39 (1966). Brest (1980): p414.

maintain establishments there. The invitation is to shop for the products which are sold. ... Even if the Plaza has some aspects of 'public' property, it is nevertheless true that some public property is neither designed nor dedicated for use by pickets or for other communicative activities. The point is whether Logan Valley Plaza is public or private property, it is a place for shopping and not a place for picketing."⁸

Another court decision involving a shopping center emphasized property interests over the public attributes of the place:

"[Property does not] lose its private character merely because the public is generally invited to use it for designated purposes. Few would argue that the standing store, with abutting parking space for customers, assumes significant public attributes merely because the public is invited to shop there. ... The essentially private character of a store with privately owned abutting property does not change by virtue of being clustered with other stores in a modern shopping center."⁹

Despite these views that favor property interests over public use, important interpretations have been made about the 'private' performance of 'public' functions in cases involving shopping centers. The court decision of a case in 1968¹⁰ produced the concept of shopping centers as "the functional equivalent of a normal municipal business district -- open to the public to the same extent as the commercial center of a normal town." The growing trend towards the private performance of public functions was cited as an important criteria in favor of civil rights on private properties:

⁸ The case is *Amalgamated Food Employees v. Logan Valley Plaza* 391 U.S. 308 (1968).

⁹ The case is *Lloyd Corporation v. Tanner*, 407 U.S. 551 (1972).

¹⁰ *Amalgamated Food Employees v. Logan Valley Plaza* 391 vs. 308.

"It would not be surprising in the future to see cities rely more and more on private business to perform functions once performed by governmental agencies. The advantage of reduced expenses and an increased tax base cannot be overstated. As governments rely on private enterprise, public property decreases in favor of privately owned property. It becomes harder and harder for citizens to find means to communicate with other citizens."¹¹

Judicial cases present conflicting opinions regarding the definition of public space as a setting for public expression. There is a general understanding of a basic principle that practicing constitutional rights is to be more based upon whether the property is dedicated to public use rather than whether it is publicly owned or privately owned. Nevertheless, circumstances of a specific situation, such as the characteristics of the particular place, the manner of free expression, or the availability of alternative channels of communication, are often taken into account in decision-making, and therefore, making a basic principle not always accountable. Furthermore, the Supreme Court has not made definite decisions regarding the use of indoor spaces. It has somehow managed to avoid questions surrounding the public use of privately owned and operated indoor spaces (for example, sitting in a restaurant or a lunch counter to protest) as a category under the heading of public forums. In the absence of guiding principles, some local courts have held conflicting decisions on the use of bus

¹¹ This remark was made by Judge T. Marshall who led the decision in the Logan Valley Plaza case, dissenting the majority decision of *Lloyd Corporation v. Tanner*, 407 vs. 551 (1972). This case severely limited the principle addressed in the Logan Valley case by deciding that the distribution of anti-war leaflets had no relation to any purpose for which the shopping center was being used.

terminals, airports, or similar places as a location for free expression.

Regulating public use

The regulation of the public's use of public open space by related authorities is critical in shaping the actual practice of civil rights, particularly in light of a lack of consistent interpretation of public space by the Supreme Court. The Supreme Court, however, warns excessive delegation of power in the regulation of civil liberties:

"It [the court] is farther yet from saying that the "custodian" of the public property in his discretion can decide when public places shall be used for the communication of ideas, especially the constitutional right to assemble and petition for redress of grievances. For to place such discretion in any public official, be he the "custodian" of the public property or the local police commissioner, is to place those who assert their First Amendment rights at his mercy. It gives him the awesome power to decide whose ideas may be expressed and who shall be denied a place to air their claims and petition their government ..."¹²

Furthermore, the Court has ruled that laws requiring a permit before holding a meeting or demonstration involving use of the streets or other public spaces are valid, as long as the permit controls only 'time, place, and manner', not the message of such meetings. This principle is the result of an effort to balance First Amendment freedoms and competing regulatory interests. In

¹² Brest (1980): p415.

principle, regulatory controls of public activity are to be drawn with narrow, objective, and definite specificity. In fact, local legislation which are vague and overbroad in their contents have been judged invalid in judicial decisions.¹³

Then, what principles must be adhered to in the regulation of use of public open space? The compatibility of public activity with the primary use of a particular property is a key principle. That is to say that any public expression should not intrude upon the normal activities that a particular space is intended to accommodate. General criteria such as 'public welfare, peace, safety, health, decency, good order, morals or convenience' are also to be addressed as detailed principles.

For example, the National Park Service sets the following guidelines concerning demonstrations and other forms of public assembly and freedom of speech (National Park Service, 1975):

"Parks may be used for public assembly and for the exercise of freedom of speech, provided that those wishing to assemble obtain a permit from the Superintendent or other official in charge of such park, specifying the occasion for the assembly, the expected number of participants, the manner in which the assembly will be conducted, and the length of time the assembly

¹³ Several cases involving parks and public streets support this principle. For example, the permit procedure case defined in County Ordinance, Milwaukee Mobilization for Survival v. Milwaukee County Park Commission, 477 F Supp. 1210 found that the provisions of county ordinances were unconstitutional because "(a) their guidelines were overbroad and general; (b) they did not include any standards limiting the discretion of the Commissioner; and (c) they did not provide standards assuring protection of the First Amendment rights and adequate procedural due process safeguards. (Peterson & McCathy, Handling Zoning: pp516-518)

is to last. Superintendents of urban areas may designate certain parks or parts of parks as public assembly areas wherein permits are not required for individual speakers or small groups. In natural and recreational areas, assemblies may be confined to areas open to the general public and regulated in such a manner as to protect the natural features. In historical areas and historic zones, assemblies should be held where they do not threaten imminent danger, by virtue of crowding and related normal circumstances of assemblies, to historic properties. No group wishing to lawfully assemble may be discriminated against or denied the right of assembly, provided they have met the above requirements."

This guideline makes several points explicit: the permit-issuing power of an authority to be based on non-content-based criteria, the protection of civil rights by designating some specific spaces for such purposes, the protection of the basic purposes of a certain space, and the non-discriminatory principle within the administration.

Similarly, municipal park services draw up their own rules and regulations concerning permit issuance. For example, the Parks Department in New York City employs the following criteria in permit administration:

-- Compatibility with normal activities¹⁴

(1) The proposed event would substantially interfere with the use and enjoyment of the Park by the public as contemplated by this Agreement;

-- Maintenance and environmental concerns

(2) The location sought is not suitable because of landscaping, planting, or other environmental conditions reasonably likely to be harmed by the proposed events;

-- Carrying capacity

(3) The location sought is not suitable because it is a specialized area, or because the proposed event is of such a nature or duration that it cannot reasonably be accommodated in

¹⁴ Titles of criteria are phrased by the author.

that location;

-- Procedural agreement

(4) The date and time required have previously been allotted by permit;

-- Public health and safety

(5) The proposed event will present a clear and present danger to public health or safety.

Administration of permit regulation

The administration of a permit system is subject to the discretion of the authority in charge, thus, some arbitrary discrimination may take place.¹⁵ This is true regardless of the level of specificity of regulations, since regulations do not spell out in detail what every appropriate use of a park might be. As can be seen in the examples cited in the above, rules and regulations for park services usually suggest criteria that to be considered in determining a specific permit application. An actual decision of the appropriateness of a certain activity is heavily based on policy and management considerations. And interpretation of the rules and regulations is flexible, often influenced by the management's direction, implicit or explicit, in promotion of intensity of use as well as type, of activity.

¹⁵ Therefore, the fundamental protection of civil rights requires some remedies for administrative failures as well as to insure consistent principles of regulation, which a legal society struggles to institute. This challenging area of concern is, however, beyond the scope of this thesis. For more details, refer to Norman Dorsen, ed. The Rights of Americans (1977): pp220-228.

Public Discretion At Work: Central Park, New York

Central Park in New York City is an illustration of how shifting policy emphasis and the discretionary power of the Parks Department influences the frequency and kind of public use of a public park. Sometimes as a result of pressure from changing public expectation and at other times in an effort to remedy perceived problems, the Department has practiced a policy ranging from restrictive to liberal interpretation. During the process, the public administration of the permit system has been accompanied by criticism and controversy, centering on the fairness of the administration.

It is well known that during the era of Robert Moses as Commissioner, Central Park, having been restored from a run-down condition, was treated much like a museum -- to be seen but not touched. "Keep-off-the grass" and "No trespassing" signs were prevalent and public events were selectively accommodated. One case of litigation during this period illustrated the administration's highly selective attitude. The department refused to grant a permit to a theatre group's application for a "free festival" unless it charged an admission fee.¹⁶ It is noteworthy that this "high-brow" attitude concerning public use of the Park coincided

¹⁶ The court held that the department's decision was arbitrary, capricious, and unreasonable, in this case of Shakespeare Workshop v. Moses, 8 App. Div. 2d 343, 187 N.Y.S 683 (1959).

with the introduction of commercial enterprises and private cultural institutions into the Park.

The liberal programming direction of the 1970's, on the other hand, was geared to accommodating a large number of diverse public activities -- rock concerts, sports events, athletic activities, and large-scale celebrations. Demands made on the existing permit issuance caused it to crumble. Many activities took place without a permit. In a department study made in 1978, the authors of the study were even unable to figure out precisely what kinds of organizations had acquired permits for what kinds of event during the previous four years. The study concluded that the number of events had gone up at least 100 to 150% in the 1974 - 8 period. The study pinpointed problems including physical damage, uncontrolled crowds, uncollected garbage, illegal vendors, rampant commercialization, and an absence of peace or tranquility, especially during weekend use of the park.

The current programming emphasis for Central Park has shifted to conservative discretion, reflecting current concerns for conservation and restoration of the Park. The recent administration of permits emphasizes more practical matters such as the environmental impact of events, including possible damage to the landscape, noise levels, effects of vehicular traffic, and the size of expected crowds. Questions such as the nature, duration, size and location of a proposed event or exhibit, and possible

conflicts with the park's day-to-day operation, its natural beauty, or its management policies are examined in determining whether a particular event is appropriate within a given setting. Furthermore, the benefits of an event that might accrue to the Park in terms of financial, aesthetic, or educative aspects are reviewed; non-commercial events are preferred; and permit issuance is allowed only when it is determined that there is no other more appropriate site, following the current policy to reduce the total number of events. Under this policy direction, several large scale events were rejected including a food festival¹⁷ in 1978 and a cultural festival in 1977.¹⁸

Throughout these periods, rules and regulations for the process for the issuance of permits remained basically the same. What has changed over time is the Parks Department's general policy regarding the promotion of public events. Under the current administration, more explicit guidelines and an objective review process to evaluate the potential impact of public events has been added. Despite the attempt for more objective standards, the power to decide who can use the park and for what kind of activities still essentially rests with the Park Commissioner. Thus, the

¹⁷ A food festival, the "Taste of the Big Apple" that had been held twice before, was rejected in 1978 because of concerns for possible damage and cleaning-up problems associated with the crowd of 350,000 expected. (The New York Times, April 19, 1978.)

¹⁸ This case, a cultural festival organized by a religious group went to court. In *ISKCON v. Lang*, 91 Misc., 2d 421 (1977), the court held that the Department's regulatory policies were acceptable, acknowledging current conservation issues.

Commissioner's discretion is often the subject of public concern. For example, in view of generally tighter restrictions on park use, Commissioner Davis' approval in 1981 for a pop concert, which drew an audience of 300,000 was criticized as a personal reflection of the Commissioners taste for pop music, and his alleged conviction that the general public shared his taste.¹⁹

The Department's discretion is also often politicized. When vetoing future rock concerts in the Park citing concerns for the noisy crowds and violence that might accompany such events, Commissioner Stern in 1985 stated that "performers will be chosen by the kind of music they play and the type of audience they attract."²⁰ This policy was criticized as discriminatory in that certain kinds of cultures are associated to certain ethnic groups.²¹

The discretion in permit issuance is becoming increasingly controversial. The differentiation between political and religious activities, which carry more weight in constitutional protection, and artistic and cultural activities, which are likely to carry

¹⁹ The New York Times, September 19, 1981, "Is Central Park for Solitude or for Celebration?".

²⁰ Daily News, July 8, 1985, "City Bans Rock in the Park".

²¹ The Commissioner's action was indeed influenced by the violent incident that involved a black singer, Diana Ross' concert. The event was permitted because of an agreement that a percentage of the proceeds would be used to build children's playgrounds in the park. The agreement was never satisfied. The New York Times, January 4, 1984.

less protection, is difficult. Cultural expression has become the most frequent form of public expression in parks and this reflects several trends. There is a popular expectation for the light-hearted presentation of serious matters; festivals promote for political or religious causes, avant-garde approaches in cultural expression with social and political statement, and socially-conscious and political causes are often attached to cultural or commercial programs, in the name of praise-worthy and noble causes. In this situation, a cultural event is converted into one that arguably involves First Amendments.

The controversy that surrounded the proposed 'Christo' project proposed in Central Park in 1980 details the predicaments possible in the process of administration of a permit system. In his "Gate" project, the artist Christo proposed installation of between 11,000 to 15,000 fabric gates arching over 25 miles of Central Parks' pathways, borne by the same number of prefabricated metal frames anchored in the ground. Cultural as well as social benefits were claimed: the event was to be "a celebration of the processional, ceremonial walkways of the park by activating their overhead space." The project, it was stated, would address the equity and minority interests by acknowledging cultural differences between the northern and southern ends of the Park. It was further argued that the project would be "an important unifying artistic event which would not only provide beauty and joy for all the people of the City, but would be a real and symbolic opportunity of bringing

different ... New Yorkers together."²² The project was impeccably packaged: Full financing of the 5.2 million-dollar-project cost would be furnished by the artist as well as full responsibility taken for maintenance of the installation and removal. A comprehensive environmental impact study was provided that analyzed the physical, socio-economic, and ecological aspects of the project and argued that there would be no serious impact on any front. Moreover, job-creation was cited as another benefit by involving youth groups during installation.

Not surprisingly, this project received mixed reactions. There was strong opposition from park groups on environmental protection ground, general support from the arts community, including the city's Art Commission which traditionally favors free expression, of cultural pluralism and democracy, and divided opinions between the two community boards involved.

In the middle of the debate on these cultural, political and environmental issues, the Parks Department stated its position by articulating the possible impact of the project. While the project might have put the Parks Department's cultural standards and taste to test, it managed to look non-judgmental, avoiding a debate on those issues. Two attitudes prevailed: On the one hand, art exhibits in public space are often criticized to be "defended for

²² "Christo: The Gate Project," New York Parks Department, 1981: pp 50-56.

its intellectual value, for what the piece says or expresses, rather than for what it looks like."²³ On the other hand, the liberals argue that free cultural expression to be protected simply because American society is "too pluralistic, too heterogeneous, too disparate in its moral and social values, and too various in its level of aesthetic sophistication ever to agree on standards of aesthetic quality."²⁴ Acknowledging this debate, the Parks Department stated that it is neither a cultural arbiter nor a blind protector of cultural democracy but that it is attempting to balance between Central Park, arguably, as a prominent cultural object in itself, and that as a space that accommodates art objects.

Regarding the social claims of the project, the Parks Department defended Central Park's role as a whole entity, used by a wide variety of groups, despite some disparity of use among its parts. The department expressed doubts about the objectivity of an opinion survey furnished by the artist that showed high proportions of minorities and people of lesser education and lower income levels supporting the project, as the department's own opinion survey showed little correlation between social class and support for the project. (Glazer, 1983)

²³ "The Malignant Object: Thoughts on Public Sculpture", Stalker, Douglas and Clark Glymour, The Public Interest, 1982, Winter, pp 3-21.

²⁴ "Paradigm in Public Sculpture," The Public Interest, 1982, Winter, pp 24-27.

The Parks Department relied on environmental issues in its denial of the permit. In the most objective terms possible, it stated that the project was "in the wrong place, at the wrong time, and in the wrong scale" and suggested alternate city-owned sites.

In this section, it has been shown that despite legal protection of public assembly and free expression within public space, the authority of the guardians of the space is imperative in regulating use dependent on policies and guidelines. Also influential is the authority's discretion for determining the extent and the type of public use, even in the case of a public authority responsible for permit issuance, as illustrated in the Central Park example. If this is the case with a public authority, the situation as it occurs with private management must also be examined.

5-2. Policies and Procedures of Private Management

Private management usually adopts elaborate guidelines and explicit procedures to make administration of its policies clear-cut, as well as to avoid potential controversy. Do these guidelines and procedures differ greatly from the standard practices of public management? And, further, does a private management authority exercise greater discretionary power than that of a public authority?

Policies of public use control

Private management organization address the accommodation of various forms of public expression as a key concern in its programming efforts. For example, the programming guideline of the Non-Profit Corporation (the NPC) of Pioneer Courthouse Square advocates comprehensive arrays of activities to be hosted in the Square:

The goals of programming include: attracting new people downtown; enriching the environment of those already downtown; providing an attractive stage for the performing arts, civic and cultural organizations; promoting exhibit opportunities for commercial, civic and advocacy organizations; and supplying a forum for political and civic speeches.

In principle, any public expression in a public space under private management must be approved. Thus, the following requirements are stated in the NPC regulation:

Without first obtaining a permit, a person shall not in or on the Square; conduct or participate in any organized demonstration or public gathering; conduct any artistic or entertainment performance; place or carry an advertising device or advertising sign of any kind whatever; erect any post, pole or easel; attach any notice, bill, poster, sign, wire, rod or cord to any tree, shrub, fence railing, fountain, wall, post or structure; place any advertising, decorative or other device of any kind whatever, on any facilities of the Square; possess, sell or distribute any alcoholic liquor; or place any work of art for display purposes.

This requirement for permits which may sound strict, is consistently demanded in any public space. Public regulations offer specific grounds for controlling activities within public spaces, although this fact tends to be little recognized due to a

relatively lower degree of public enforcement. Public rules and regulations require permit for any activity which may alter, even temporarily, the character and the condition of public spaces.²⁵

Rules and regulations in private management are based upon public regulations. The Bryant Park Restoration Corporation (the BPRC) is using similar criteria as those used by the Parks Department: compatibility to normal activities, maintenance and environmental concerns, carrying capacity, procedural agreement, and public health and safety, as presented earlier.

The NPC spelled out criteria more in detail as follows:

-- Compatibility to normal activities:

(1) The proposed activity is consistent with the size of the Square and its specialized purpose as a public square in the central City business district, and the specialized facilities which have been provided.

(2) The proposed activity will not unreasonably interfere with the surrounding central business district surrounding the Square and its occupants.

(3) The proposed use does not involve a commercial activity.

(4) The proposed activity will not unreasonably interfere with the activities of any lessees or concessionaires on the Square or the concurrent activities, if any, of prior permit holders.

-- Carrying capacity:

(5) The anticipated size of the proposed use and assemblage is within the capacity of the Square.

-- Environmental concerns

(6) The level of noise expected does not violate the written

²⁵ Despite some differences in terms of phrasing municipal codes, the principle of the codes is the same: that is, any conduct in public properties is subjected to obtaining a permit prior.

noise policy for the Square.

-- Security

(7) Adequate security for the proposed activity will be available.

-- Public decency

(8) The proposed use does not involve obscenity as defined in the city ordinance.

-- Maintenance

(9) The permit applicant has not violated any permanent conditions or restrictions or any rules, regulations and ordinances applicable to the Square in connection with any prior permit granted to such applicant.

(10) The proposed activity does not create an unreasonable risk of substantial damage to the Square.

Thus it can be seen that official rules and regulations of private management are in compliance with public regulations, even further spelling out more detailed guidelines for how each criterion is defined. Nevertheless, while some criteria are possibly applied with greater objectivity (For example, the NPC provides the number of people for designated parts of the Square in regard to carrying capacity and the decibel levels for a noise control), others are subject to interpretation.

Discretion in administering a permit system

A private management organization can exercise discretion in deciding the appropriateness of public activities by administering the day-to-day operating function. An elaborate permit processing procedure established in private management for quality-control is

a double-edged measure: On the one hand, by articulating procedures and requirements, it seeks administration relatively free from possible conflicts. On the other hand, it certainly augments discretion of private operation in maintaining quality-control. For example, the NPC employs a systematic permit application system: It requires an applicant to provide detailed information on the character of a proposed event in terms of promotion, fund-raising, service, the distribution of printed matters, technical facilities, the use of signs and banners as well as the event's purposes. Once approved, terms and conditions for using the space are required, including setting-up, loading and parking, the provision of adequate security, cleaning-up, and mandatory insurance coverage.

Acknowledging the need for balancing public authority and private discretion in controlling use programs, management agreement in privatization cases employ several safeguard measures. First, the establishment of rules and regulations, and changes to them are subject to prior approval by public authority. The Bryant Park case requires approval of the Park Commissioner; in the Pioneer Courthouse Square case, an approval by the City Council is necessary, making its rules and regulations a part of a municipal code. Second, a monitoring mechanism is also instituted. Bryant Park has adopted a constant monitoring procedure by requiring the BPRC to report proposed events to the Park Commissioner who has veto power over any event. The management agreement states that

"no public event or series of events shall be conducted in the Park which the Commissioner find would alter the nature of the Park as a public facility or would create a substantial public nuisance."²⁶ Pioneer Courthouse Square grants greater discretion to the NPC without requiring continuous reporting. Its approach is more a collaboration than constant monitoring of the performance of a private corporation: the NPC pre-schedules public events and their distribution throughout the year, and at the beginning of each fiscal year presents the schedule for consent by the Park Bureau. Instead of reporting, the NPC corporation refers any permit application they deny to the Bureau for the consideration of alternative parks or public areas where such use would be appropriate.²⁷

Examining the official policies of privatized management shows that private management is assuming some discretion of day-to-day operations in controlling park use, as was formerly practiced by park agencies. Although these policies are tailored to the needs of effective private management, they must be consistent with public regulations and approval by a public authority. Thus, private management officially has no more power than public management.

²⁶ "The BPRC Management Agreement," p 18.

²⁷ "The NPC: Permit Policies and Guidelines," p4.

Programming capacity of private management organization

Private management's greater discretionary power is derived from another source; their promotion and programming capacity. Private management organizations, unlike public management, take the initiative to actively organize activities and solicit sponsorship. The NPC prepares a detailed plan of activities and solicits sponsorships from various sources. All the programs the NPC provides are sponsored by outside parties and the corporation provides the equipment needed for public activities, security, and promotional services. The BPRC has adopted a similar policy, although Bryant Park programs currently are a mixture of privately sponsored and BPRC-sponsored. The programming function of these cases make up a large proportion of the operating budget, ranging from 30 to 40% of the total management costs. (The details are presented in Chapter 6.)

High programming costs mean that support from business groups and private institutions is critical. To secure continuous support, the NPC established an official membership which is open to business groups and individuals. The BPRC maintains a link, although informal, with private institutions and business groups who regularly sponsor activities or contribute to programming activities. Private management organizations also aggressively pursue promotional activities, soliciting both activities and participants by wide distribution of a brochure and posters of

scheduled activities.

Discretion in event programming may resemble that practiced by private management companies of privately owned, commercially related public spaces. Extremely selective controls, often exercised in these private spaces for purposes of strict quality-control, such as auditioning performers before granting permits (as in Faneuil Hall Marketplace in Boston or in Ghiradelli Square in San Francisco) is seldom practiced by the management organizations of public space. Nevertheless, the general use character of public open space is likely to be influenced by programs offered by management organizations. In private spaces, public events are managed to be complementary to anchor use, and they are carefully designed not to be competitive with or too engaging, thereby distracting patrons from the commercial purpose of the space. They are often limited to a narrow range of events such as entertainment and festive activities. Events in public spaces are, however, often considered to be prime generators of use.

5-3. The Characteristics of Use Programs

What types of public activities are represented in these privately managed public spaces, given the internal policies and procedures of private management? And how does the programming directorship of the private management organization influence actual content of

public activities?

Several distinct features can be found in the activity programs of Bryant Park and Pioneer Courthouse Square in terms of the frequency of events, the distribution of activity types, and the representation of sponsorship. (Refer to Table 3 and 4.) First, the number of programs that appeared within the space is exceptionally large: In Bryant Park weekday lunch hours are filled with programs during the summer season; Pioneer Courthouse Square accommodates more than 200 activities throughout the year with diverse programs that are to be distributed during several zones of time -- lunch hours, evenings, and weekends. The frequency of the programs, far outnumbers that of publicly managed open space²⁸ and that of private spaces.²⁹

Second, diverse programs are offered, but with an emphasis on cultural programs. Among cultural programs, performance art is most evident. Music performances are popular as lunch hour programs, since they are easy to organize, less costly, and yet effective in attracting crowds. Two thirds of the Bryant Park programs are of this type. Engaging and participatory kinds of

²⁸ The record of programs held in the Bryant Park before the BPRC operation is not available. But that of Copley Square gives an indirect reference: During the summer season of 1983, the Park Department issued only six permits for the use of the Square with an exception of the farmer's market which was held once every week.

²⁹ For example, the office plaza of the First National Bank in Chicago, which is famous by its lively events, accommodates lunch hour performance programs three times a week.

activities are offered occasionally because they require more preparation, staffing, and security provision. The incorporation of educational programs is worthy of note within programming, as well. Walking tours in Bryant Park or poetry readings and lectures in Pioneer Courthouse Square are examples of such offerings. The heavy representation of cultural programs is a natural result of an organization's intent to appeal effectively to popular taste. Cultural programs with entertainment components have been well received by general users, judging by good public attendance at these events.

Third, sponsorship comes from a wide range of groups including business groups, local business associations, community groups, civic associations, private cultural institutions, and public agencies. Local business groups are most frequently financial sponsors and contributions of services are made by city-wide institutions. The NPC, which is in full operation, exhibits a certain permissiveness by allowing activities with commercial components in order to attract more sponsorships. They also differentiate fee schedules for use between non-profit/charitable organizations and commercial enterprises. Often, fund-raising for the Square is done in conjunction with public events by arranging for some percentage of the proceeds to be used for the management of the Square.

The highly programmed status of these spaces is systematically

coordinated. In order to facilitate the accommodation of various types of public events, the NPC devised a permit system that breaks the square down into six sub-spaces, each of which is designated for particular types of activities. (Fig. 10) The square is also well equipped with technical support systems.

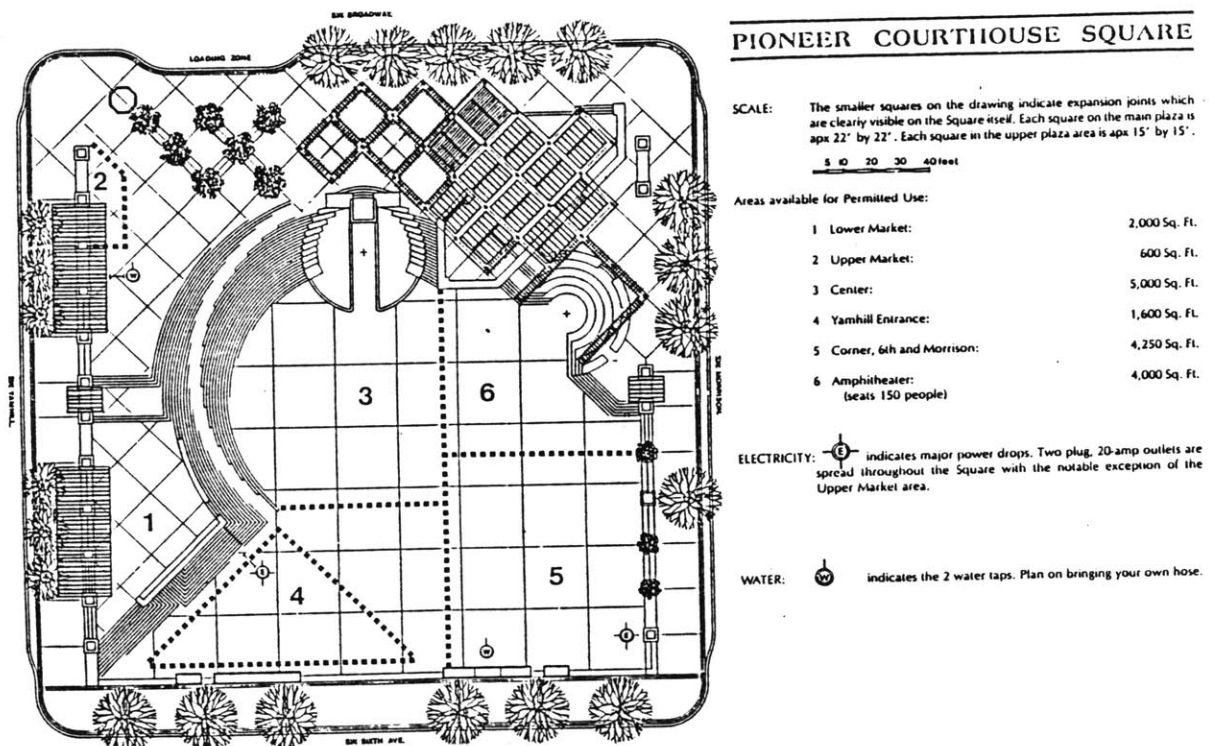


Fig. 10. Pioneer Courthouse Square: Use permit system
The space is subdivided into six spaces for which use guidelines are provided.

The success of a private management organization's performance is often measured by the number of programs and their popularity: Programs and the response of patrons are highly publicized and used as promotional materials. The success of programs provides a legitimization of the organization's existence. This is especially pertinent to the NPC whose mandate is the operation of park use, and thus pursue a full-fledged programming effort. The BPRC, which performs maintenance in addition to operations, is relatively less pressured. Nevertheless, the BPRC is conscious of providing more diverse and frequent activities in the park, although this is currently limited because of budget constraints.

Relying upon private support, the programming status of privatized cases is inevitably contingent upon changing circumstances. A reduction in the number of programs may occur, in the case of an economic decline in downtown business or simply by private funding groups' perception that their support is not worthwhile. The BPRC, for instance, experienced difficulty in fund-raising when it was not able to carry out their initial plans. A reduction in programs could change the character of these spaces, contradicting some assumptions that underlie private management. Private management's countermeasures, if such situations were to arise, are not certain.

Table 3: Bryant Park Program Contents

The Bryant Park Restoration Corporation holds lunch hour programs every weekday. Programs feature mostly performance art: musical performances are dominant including classic, jazz, and brass band; dance performances and juggling workshops make up the rest.

Types and Frequency of Programs

: From June 2 to September 12, 1986

	total number	outside sponsorship	sponsored by the BPRC
1. music performance	58	42	16
classic	21	7	14
jazz	16	16	-
band	11	9	2
misc.	10	10	-
2. juggling workshops	17	-	17
3. dance performance	2	-	2
4. outdoor art	1	-	-
5. walking tour	4	-	4
6. festivals*	7	5	2
Total number	89	48	41
(Percentage)	(100%)	(54%)	(46%)

* The scale of festivals is relatively larger than other events. Being participatory in nature, they include a parade, a banner-raising celebration, a Youth Day festival, an International festival, a chess exhibition, a baseball festival, and one Sunday River-to River festival.

(Source: This analysis is made from several BPRC program schedules, 1986)

Table 4: Pioneer Courthouse Square Program Contents

The NPC has provided a wide range of continuous programs in the Square throughout their four years of full operation. The programs include lunch-hour, evening, and weekend programs as well as fairly large-scale seasonal events. Off-season programs are also provided. The contents of programs are quite comprehensive as well, including performance art, exhibition, participatory programs like dancing and exercise, entertainment, sales, and so forth. All activities are sponsored by various sources -- business groups, public institutions, civic associations, public agencies, media, and others. The involvement by community groups, schools, churches, etc. is also solicited. Fund-raising and philanthropic activities as well as conscious-raising gatherings organized by non-profit and charitable organizations are accommodated.

Types and Frequency of Programs: 1986

I. Regular programs

	summer season (off-season)		
	Lunch	Evenings	Weekends
1. Performance			
-- popular music	15(24)		13(2)
-- classic		7	
-- others	4		
2. Participatory			
-- dancing	1(1)	(1)	
-- exercise		4	1
3. Movie viewing		1	
4. celebration			4
Total number*	20(25)	12(1)	18(2)

* The total number 50(28), respectively of summer season and off-season, was actually broken down into more smaller events, making about 200 related events.

Table 4. continued

II. Ad-hoc programs (6 activities in total)

- Volunteer fair by community organizations - 2 day operation
- Annual food drive by a charity organization
- Memorial service and candlelight vigil by MADD (Mothers Against Drunk Drivers)
- A rally against world hunger and nuclear arms by SANE
- Campaigning for the National Smokeout by American Cancer Society
- Senior citizens' kick-off by Older American's Month

III. Seasonal events (8 events held over 50 days altogether)

Each event has a collection of activities featuring performances, exhibition, lectures, sales, information booths, or others,

- | | |
|---|------------------|
| -- The Festival of Flowers in May | 15 days duration |
| -- Imagination celebration: Children's Arts Festival in May | 5 days |
| -- World Trade Week in May | 5 days |
| -- Multi Arts Week in August | 5 days |
| -- Light Rail Opening Celebration in September | 3 days |
| -- Christmas Tree Lighting celebration in November | 1 day |
| -- Winter celebration, Toast the Season in November | 1 day |
| -- Chanukah Festival of Light | 15 days |

5-4. Tolerance in Controlling Public Use

If public activities are generally programmed by a management organization which responds sensitively to the popular expectations of the public and sponsors, then to what extent is rather unconventional use tolerated in these privatized spaces? 'Unconventional use', meaning an expression of opinion regarding political, religious, and cultural matters as well as spontaneous activities. As previously presented, the rules and regulations or official policies of these spaces do not willfully prohibit any freedom of expression. However, regardless this official policy, is private management tolerant enough to accommodate unconventional use?

There has been little negative evidence on this question, although each of the cases is relatively recent. Pioneer Courthouse Square, during its four years of permit administration, has no recorded refusals of permit applications. The official guideline of the NPC prohibits only an explicit exhibition of religious symbols on the square. And several events communicating political messages as well as philanthropic events have been held. (Refer to the Table 4 for the record of events in 1986.) In Bryant Park, whose permit processing is still administered by the Parks Department, protests and rallies are held, as they have been historically. Whether these kind of activities will be held in the park, once the BPRC takes over permit administration as planned, is yet to be seen.

Some responses regarding the question of private influence on controlling unconventional use may be speculated. First, the high capacity level for enforcement by a private management organization may bring with it restrictions of spontaneous or marginal activities. Many legally prohibited happenings within public spaces, such as street entertainers, impromptu speeches, or the distribution of materials takes place by exploiting the vacuum of public enforcement. In privatized spaces with private security forces, these happenings, once judged as "programmed events", are likely to be strictly regulated. Some private plazas, with lesser dense programmed event schedules, for example, the First National Bank Plaza in Chicago, allow unofficially street entertainers within certain limits, although they are not encouraged. Private management organizations, specifically because of their mandates and explicit policies for programming are is unlikely to show this kind of tolerance. In effect, public spaces under private management may become highly moralized spaces.

Second, the elaborate procedures and requirements surrounding programming suggest an issue of access. Will a wider range of public activities be tried or offered? For example, events accommodated in Pioneer Courthouse Square are generally sponsored either by commercial enterprises or established organizations. Because of the insurance coverage required (space use fee are not usually a problem), relatively few less-established organizations can meet the requirements for holding an event and when possible,

the size of their events is limited to small scale activities. The relationship between power and access is not a problem peculiar to privatized spaces, yet since privatized spaces are fundamentally public space, the issue is problematic.

Third, the programming emphasis of privatized spaces may in fact influence public perception of the a role of public space as a forum. Will flourishing cultural and entertainment programs within privatized public spaces discourage other types of activities from taking place? Perhaps not. Pioneer Courthouse Square displays a coexistence of various activities coordinated by the NPC. The popularity of enhanced, well-used privatized spaces may be an encouraging factor, making more diverse activities suitable to these spaces as an ideal setting for their expression, much like shopping centers are often chosen as a location for the effective communication of political messages to a greater number of the public. However, will spontaneity and freedom remain as the public image of public space? It may be that programmed spontaneity and conditioned freedom may be the transformed image of privatized public spaces.

Conclusion

In this chapter, two major issues of the public use of public open spaces in cases of privatization have been examined. The first is

the issue of the control of public use by a private management organization, and whether that control is practiced to allow for the fundamental freedom of public expression in public space. The second issue relates to private management and how it affects the actual contents of events and programs, and thus, the general use character of the public space.

Taking into account the official measures of use control given private management, there is little reason that the first issue should be of concern. The rules and regulations of use control in private management are compatible to those of public management and such functions as programming and permit administration are mentioned under the authority of public administration, with some variations of this monitoring arrangement. However, of critical concern is the discretion which is naturally a part of actual operations and administration. In principle, public use of privatized public space is legally protected in the same manner as any other public space. However, the legal principles invoked are not always consistent in defining the appropriateness of free expression in public space. This factor allows some discretion on the part of a management authority in regulating public space and the imperative of accommodating public use. As in public management, private management is subject to exercise discretion to some degree. And this discretion is intensified by the heightened programming and enforcement capability of private management.

The programming capabilities of private management can produce a highly structured status within privatized spaces, with an emphasis on cultural programs. The continuity of programming is dependent upon private sponsors' contribution in terms of financing or services, which is largely engineered by a private management organization.

Chapter 6

Control Authority: Public vs. Private

The main focus of the previous three chapters has been how privatization affects the quality of the use of open space through design, programming, and operational decisions. This chapter takes a different viewpoint, dealing with an institutional arrangement of privatization. The overriding concern over privatization is that the public sector is relinquishing its responsibility for public space governance. Private funds and private participation in the planning process are viewed somewhat positively yet by transferring actual management to private hands stirs negative reaction. Related questions encompass whether the transfer of management is really necessary, in what ways it is effective, and the ways in which private management can be accountable in the long-term for open space management. Further, the ultimate issue of privatization is how the public sector's role is to be redefined in this changing relationship.

This chapter will discuss the necessity, effectiveness, and accountability of private management in following three sections. The first section will lay out the relative merits of a single private management organization necessitating private management over public management. Several variations of the arrangement of management will be explained in relation to circumstantial factors such as particular development processes and related legal/regulatory issues of privatization. The second section will deal with the effectiveness of private management, describing its dependence upon financial stability, which in turn is reliant upon private financing. The third section will look into various measures designed to ensure accountability of the management organization, in terms of the monitoring of performance and organizational structure. It will be shown that the management agreements struck in cases of privatization maintain the ultimate public authority of management. Finally, how the public sector's role is to be viewed in privatization will be discussed. The public sector's role as policy maker and provider of services will be the focus of discussion.

6-1. The Necessity of Private Management

Advantages of private management

The private management of public open space is necessitated by two basic, but often overlooked, facts. First, it is motivated by the

need to augment, rather than substitute for, the normal management functions of park agencies. Primarily, fund-raising, programming, and security functions are greatly enhanced by private management. Second, private management is aimed at providing locally sensitive management of a particular space, which demands greater discretion in budget and management decisions.

Public management is often hampered in achieving these two goals. First, because of their structures, park agencies that operate within a conventional public management framework must deal with all park services that are under their jurisdiction equally and comprehensively. Comprehensiveness and fairness are carried out through budgeting and financing methods. In budgeting, except by prioritizing the allocation of capital improvement funds, public agencies must allocate maintenance funds on an equal basis. Similarly, financing in general adopts a puristic approach which does not differentiate sources or ultimate use. Accordingly, revenues from normal taxes are placed in the general funds, to be appropriated for park purposes. In some cases tax revenues (usually special assessment taxes), can be earmarked for park purposes and placed in the special funds, but this is done frequently without designation of one particular space. Income from concession operations -- either direct operation or those contracted to private operation -- go into the general funds to be used for park purposes, however, their use for any particular space, from which the income is generated, can not be designated.

Relying on tax appropriations for park financing could ensure stability and flexibility during periods of public fiscal health. In troubling times, however, political pressures and resultant financial insecurity often obstruct constructive planning and stable management.

Operational functions of park agencies are also structured to deal with park services as a whole, rather than giving special attention to specific spaces. Park agencies are concerned with ensuring basic services like cleaning, repairs, and security to all the spaces they maintain, usually with limited amounts of funds. Their major concern has more to do with making efficient use of existing resources in overall management. In some examples, maintenance crews are used as a pool of resources for various parks or some maintenance and landscape work is contracted out to private firms.

Moreover, there are several constraints placed on park agencies if they choose to adopt more aggressive financing and management approaches within their existing organizational framework. There are limitations to their ability to pursue traditional private funds. As explained in Chapter 1, conventional private contributions usually come with restrictions for the purposes and use. Also, it is hard to solicit private donors without achieving or proposing the significant turn-around and change of a space, a proposal which public agencies can not easily deliver because of the lengthy implementation process usual to public projects.

Institution of a special assessment district, an effective way to secure private financing, is complicated. And most important, park agencies can hardly drastically transform their functions. Changing any of their major functions, such as expanding their programming capabilities, would require organizational restructuring. Restructuring is difficult in any uncertain fiscal situation, in combination with current doubts of the effectiveness of expanding public functions.

In contrast to public agencies, private operation has several advantages:

1) Fund-raising capability: A private management organization can motivate private contributions, providing incentives such as tax-exemptions for contributions¹ and uses of the fund can be tailored to contributors' wishes. As a non-profit organization, it could solicit private donations through various means -- selling memberships or gifts as well as self-administered fund-raising drives. This function provides a private organization greater capacity for programming and promoting public events.

2) Resilience of management: Private management is more flexible in its hiring and contracting out of services without the requirement of the public bidding process. A private management organization is thus able to use staff in administration and maintenance as well as voluntary helpers, as necessary, and as situations arise. Private management can also set a higher standard of maintenance than normally provided in other public spaces without causing a public debate over the fairness of dispensing public monies.

3) Responsible, localized care-taking: Through constant monitoring of a space under a definite jurisdiction, a private management organization can articulate local needs and respond promptly to them.

¹ It is worth noting that there is an argument that adjacent business sponsors' contributions should be taxable because it is directly related to their benefits.

4) Independence of financial administration: The presence of a management organization enables income generated from a particular space (concessions, permit fees, and lease incomes) to go directly to the organization without going through the general funds of the city coffer. It is the intention of this arrangement that income from a particular space be used for the benefit of that space. The Business Improvement District in Bryant Park follows the same principle.

Variations of management arrangement

Acknowledging the drawbacks of public management and the practical advantages of private management explained above, the conditions that necessitate and justify privatizing management must be determined. Phrased differently, it must be asked whether a transfer of management is inevitable under current conditions and whether such a transfer is legitimate, given the current legal/regulatory framework. Further, variations on the management arrangement, in terms of its scope of functions, are possible. In discussing these issues, it is necessary to assume that the enhanced functions of management are all necessary. Virtually, all functions, with the exception of maintenance, such as operation of concessions, programming, and fund-raising are newly added by private management.

What kind of management arrangement is available to provide these functions? A combination of all these functions within a single management entity is rarely found in other existing public-private partnerships. As explained in Chapter 1, the management

arrangement under an Adopt-A-Park program delegates only the maintenance function to the private sector, which is, thus, easily applicable to locally used spaces with easily identifiable care-takers. One notable example of successful performance of these functions without the actual transfer of management to a private organization is found in the partnership between the Parks Department and the Central Park Conservancy in New York City. In this case, private support, both financial and organizational, is exploited to its maximum potential. However, this case is rather exceptional, and successful because it involves a park of great enough prominence to attract continuous private attention and donations.

Closer comparison to cases of privatization of public open space can be made to public-private partnerships within commercial ventures, that is, the setting up of a private, non-profit corporation for the management of the common areas of large-scale projects. Retail centers are typical examples: the Gallery and the Market East project in Philadelphia, for instance. In this particular project, the common area is owned by the city, but its actual management is carried out by a private organization; a related public authority ensures that mall activities will be managed in the public interest; maintenance and security are provided as regular municipal services. Similar arrangements have been employed in managing downtown commercial streets. Described in Chapter 1, these are cases in which private associations based

in downtown retail street areas assume operational functions, leaving basic maintenance to the public, thus supplementing, rather than taking over, management functions. Since these arrangements involve commercial use and private parties with a keen proprietary interest in management, they operate from relatively secure financing sources -- management and maintenance fees from tenants, membership dues, and/or special assessment tax.

Basically, two options are possible in transferring management to a private management organization: total transfer or partial transfer. Four major functions of management are considered for the transfer: maintenance, administration of concessions (including lease administration), provision of security, provision, and programming. (Financial administration is usually awarded with the transferred functions.) The degree of transfer is usually decided on the basis of circumstantial factors, including the degree of private involvement in that particular development process and the financial arrangement, rather than on the basis of the intrinsic merits of a management arrangement.

Privatization cases define this relationship between the development context and the resulting management arrangement. The BPRC and the PSMA had been performing management functions before the redevelopment process took place, enabling them to lead the development process, engaging in planning, implementation, and fund-raising. The continuance of management by these organizations

in each space was an assumption held from the outset of planning. eventually resulting in a total transfer of management. The development process of Copley Square and Pioneer Courthouse Square were different. Private involvement in both cases was focused on planning and fund-raising, and implementation was carried out by the public sector. In the case of Copley Square the Parks Department and the Boston Redevelopment Authority implemented the construction, and Pioneer Courthouse Square was done by the Portland Development Commission in conjunction with the Park Bureau. In both cases there was a partial transfer of management. (The management arrangements of cases are summarized in the Table 5, also showing private involvement in development process.)

An obvious commonality of both a total and partial transfer is that the private management organization administers all functions related to providing public events -- scheduling, issuing use permits, programming, and promotion. The promotion function, which public agencies do not normally pursue actively, has proven especially effective in the cases of Bryant Park and Pioneer Courthouse Square. (As presented in Chapter 5.) The other common feature is the provision of security: a private management organization can hire private security firms without attendant union or civil liability problems. (Copley Square has decided not to augment security now because of less severe security problems, but the option will be open when necessary.)

**Table 5. Allocation of Development and Management Functions
Among Privatization Cases.**

	Bryant Park	Copley Square	Pioneer Courthouse Square	Pershing Square
	BPRC	CSCC	other	PSMA
Capital Improvement				
1. Planning	■	■	public	■
2. Design Administration	■	public	public	■
3. Fund-raising	■	■	public	■
4. Implementation	■	public	public	■
	BPRC	Mgmt. org.	NPC	PSMA
Management				
1. Maintenance				
-- day-to-day maintenance	■	public	public	■
-- utility provision	■	public	public	■
-- capital improvement	■	public	public ■	public ■
2. Security provision	■ public	public	■ public	■ public
3. Concession operation				
-- restaurant(caf�)	■	public	public	■
-- others	■	-	■	■
4. Programming events (permit issuing, scheduling)	■	■	■	■
Financial Administration				
-- budget allocation	■	public	■	■
-- administering revenues	■	■	■	■

(The ■ mark indicates a leading role by a private organization, with the support of related public agencies.)

Two other major management functions -- maintenance and the administration of concessions determine the extent of the transfer of management. The separation of maintenance and operation was recommended by the CSCC of Copley Square and the Citizen Advisory Committee of Pioneer Courthouse Square on the grounds that by doing so a private organization may be more able to focus on operations as well as ensuring the public agencies' commitment to effectively provide basic services. This arrangement has been also motivated by the need to relieve concern over too much private control.

The administration of concession operations greatly enhances the power of a private organization. The BPRC and the PSMA both maintain a leasing contract with private concessionaires as well as administering other concession operations -- i.e., ticket booths and vendors. The benefit of this arrangement is that leasing fees and income from sales go directly to the private organizations for their use. In the case of Pioneer Courthouse Square, the NPC conducts only administering concessions other than the restaurant: the income from the restaurant operation goes to the general city fund and their some portion of it is appropriated to the NPC. The concession operation in Copley Square does not involve a leasing contract but a concession permit instead, since the cafe structure is not permanent. Because of this arrangement, income from the cafe is under the discretion of the Parks Department.

Legal provision for privatization

Privatization necessarily involves legal issues. The types and degree of legal issues required to implement privatization vary among cases depending upon the degree of management transfer. Yet, some common issues include the state and local laws regarding the private operation of public parks and various contractual issues related the design, financing and operation of the park facilities, as summarized in the following:

- Private management of public parks
- Use of a public park land for other than a park purpose (i.e., a restaurant/cafe use in a permanent structure)
- A private corporation's development and operation of park facilities
- Setting up of a special assessment district.

The decision to privatize parks can be made locally, since municipalities have the statutory authority to implement. In fact, most cities have a number of precedents for the private operation of public land. The issue is, therefore, not how to resolve legal technicalities but rather how to convince the local community of the necessity for applying private management to an existing public open space.

Using a park land for purposes other than usual park use requires approvals from the state legislature. The lease of parkland for restaurant/cafe use is permissible according to statutes in most states, with varying degrees of restrictions. (Refer to Appendix III for a comparison of four states.) For example, in

Massachusetts, a lease of parkland for uses other than ancillary park uses (boathouse, refectories, etc.) requires a two-thirds roll call vote of the General Court, both House and Senate, according to the Massachusetts Constitution. The proposed outdoor cafe within a temporary structure as finally proposed in the Copley Square development only required the approval of the mayor, pursuant to City of Boston Code (Statutes, Title 7, Section 106). As presented in Chapter 2, Bryant Park had struggled with the New York state legislature for the lease of land for restaurant use.

Once a land lease is allowed, only the local laws regarding contractual issues are of concern to a private corporation's development and operation in terms of financing, insurance policies, and contracts terms. (Details are presented in the third section of this chapter.) A private organization, once awarded a contract, operates much like any private organization, within the terms of agreement with the city. No public bidding is required; private financing is allowed; and contracting out of services is unrestricted.

Institution of a special assessment district, as in the case of the Business Improvement District (BID) of Bryant Park, requires provision from the state legislature. Despite complicated implementation procedures, this financing mechanism, once instituted, provides a reliable income source for management.

Legal provisions explained in the above show that private management is basically possible within the current framework of state and local laws and regulations, but they may require complicated procedures that demand extra effort from both involved public and private parties.

6-2. Effectiveness of Private Management

The effectiveness of private management of public open space has to be understood in terms of how its effectiveness in soliciting private support and funding. The premise of private management is not to do more with less (or with the same) but to manage more functions with more funds. Efficiency is certainly one of goals of management, but effective fund-raising and soliciting of private support has priority. In this regard, financial security is most critical to the stability of private management.

The insurance of financial stability in management is the overriding concern in all privatization cases. All cases equally addressed the importance of long-term financing of management costs, which is sensible, since private involvement in open space development often starts with great hope and ambitions, encouraged by various financial and political support on the front-end of planning without conservative considerations of the future financial situation.

The financial structure of cases shows varying degree of dependency on private sources to cover operating costs. (Financial sources and operating budgeting are presented in Table 6 and Table 7, respectively.) Usually, tax appropriations from park agencies continue to maintain the same level or slightly more than that gained under public management. These funds basically cover costs for daily maintenance and basic utility provision; revenues from private sources and operation make up the rest of the operating budget.

Three patterns of private financing can be identified among cases:

a. Relying heavily on income from concession operations and other private support: Bryant Park and Pershing Square follow this pattern. Public funds cover only 21.6% and 18.2% respectively, of the financial sources of Bryant Park and Pershing Square which are allocated on the assumption that the parks agencies' maintenance funds will continue. Pershing Square is especially more reliant upon revenues from concession operation. Bryant Park diversified private financing by instituting the Business Improvement District (BID) from which special assessment taxes are produced. According to the BID, surrounding properties are categorized into three types -- commercial, residential and not-for-profit, and institutional use, each of which is assessed by different criteria: Commercial use covers both maintenance and public events, non-commercial use covers only maintenance, and institutional use pays a nominal rate.

b. Matching public and private funds: Pioneer Courthouse Square takes a balanced approach by having half of the estimated total operating costs (except the maintenance cost which is completely assumed by the Park Bureau) covered by the public fund.

c. Instituting a maintenance endowment: Copley Square aims at raising the maintenance endowment as a part of fund-raising for capital improvement costs. Once established, the proceeds from the endowment cover the administration cost of the management organization. Other cases aim to establish similar mechanisms using the surplus from operating funds: the Endowment Fund of Pioneer Courthouse Square, the Reserve Fund of Bryant Park, and the maintenance fund of Pershing Square.

**Table 6. Financial Sources of Operation Costs
in Privatization Cases.**

(NA: not available; conditional: up to fund-raising success)

	Bryant Park		Copley Square		Pioneer Courthouse Square		Pershing Square
	planned	'85*1	planned	planned	'85-'86	planned	
1. Public Fund							
-- Tax Appropriation <maintenance>	250,000	86,629 <not inc.>	75,000	NA	75,000 <88,000>	150,000	
Subtotal	250,000 (21.6%)	86,629 (17.9%)	75,000 (42.8%)		163,000 (49.6%)	150,000 (18.2%)	
2. Special assessment tax	410,000 (35.3%)	-	-		-	-	
3. Private Support							
-- Maintenance endowment		4,415	100,000		-		
-- private donations	condi-	251,570			25,289	conditional	
-- membership dues	tional	-	conditional		conditional		
-- fund-raising drives		-			14,322		
-- sponsoring events		2,300			61,9012		
Subtotal		344,914 (71.4%)	100,000 (57.2%)		101,512 (30.9%)		
4. Income from operation							
-- concession operation	500,000	51,350	-		64,199	490,000 (lease) 132,000 (income)	
-- Permit issuing	-	-	conditional			200,000	
Subtotal	500,000 (43.1%)	51,350 (10.7%)			64,199 (19.5%)	822,000 (81.8%)	
Total	1,160,000 (100.0%)	482,893 (100.0%)	175,000 (100.0%)		328,711 (100.0%)	972,000 (100.0%)	

*1. The operation of the BPRC in 1985 was carried out without the BID enactment and without a restaurant operation.

*2. Funds for sponsoring events are normally not included in the annual budget. It is presented in this table to show a magnitude of sponsorship.

Table 7. Allocation of Operating Budget in Privatization Cases.

	Bryant Park		Copley Square		Pioneer Courthouse Square		Pershing Square
	planned	'85	planned		planned	'85-'86	planned
1. Maintenance							
-- Daily maintenance	200,000	27,241	75,000		80,583	88,000	85,000
-- utility provision	100,000	-	-		-	-	-
-- improvement	75,000	-	-		-	-	60,000
Subtotal	375,000 (32.3%)	27,241* (10.3%)	75,000 (42.8%)		80,583 (38.1%)	88,000 (26.5%)	145,000 (20.6%)
2. Security provision	300,000 (25.9%)	-	-		20,000 (9.5%)	45,516 (13.7%)	275,000 (36.7%)
3. Programming events	250,000 (21.6%)	63,000 (23.8%)	conditional		conditional	61,901 (18.6%)	conditional
4. Administration							
-- management	115,000	143,034	100,000		74,000	103,339	150,000
-- Insurance, etc.	70,000	22,143			11,800	16,754	100,000
-- promotion	50,000	9,269			25,000	16,598	80,000
subtotal	235,000 (20.2%)	174,446 (65.9%)	100,000 (57.2%)		110,800 (52.4%)	136,691 (41.2%)	330,000 (42.7%)
Total operating cost	785,000 (67.7%)	237,446 (89.7)	100,000 (57.2%)		130,800 (61.9%)	238,260 (73.5%)	605,000 (79.4%)
Total	1,160,000 (100.0%)	264,687 (100.0%)	175,000 (100.0%)		211,383 (100.0%)	332,108 (100.0%)	750,000 (100.0%)

*1 This amount does not include maintenance cost assumed by the Parks Department.

The financial arrangement is closely related to the management functions assumed by each organization: the BPRC and the PSMA administer all concession operations, the NPC, a part of concession operations except a restaurant, and in the case of Copley Square only a seasonal concession operation. In all cases, most public events are expected to be sponsored by outside organizations. In fact, in the three cases other than Pioneer Courthouse Square there will be a larger operating budget than is presented in the Table 6 and 7, if they successfully solicit private sponsorships. Pioneer Courthouse Square, which is in full operation, shows that about 30% of the total operating budget comes from various private sponsors for specific programs.

Despite providing sizeable revenue for the improvement of management functions, private financing suggests several problems, especially when used as a prime financial source. A fluctuation in cash flow, depending upon the condition of business activities in the downtown, is possible. Accommodating the interests of concessionaires may occur, as often happened in the case of commercial operations within a park land. Considering these financial contingencies, the Business Improvement District of Bryant Park, which secures continuous private financing, or the Pioneer Courthouse Square arrangement, that balances private and public funds, to provide a stable funding source. One hopeful situation is found in the growth of a maintenance endowment fund, assuming the concession revenue is stable. When this happens,

dependence on private financing will be lessened in the long-run.

What probable consequences of management performance can be predicted in the case of reduced revenues from private financing? Unless there is public support, a reduction of management functions may occur. The most probable reduction may be in the provision of security, of which costs account for 25.9 and 36.7% of the estimated operating budget of Bryant Park and Pershing Square, as presented in Table 7. A reduction in security is likely to affect the general performance and operation of the privatized cases in which design and programs are shaped on assumptions of security enforcement. The experience of Pioneer Courthouse Square shows that the provision of security has been absolutely vital to public events being held within a secure environment. It is also noteworthy that the cost of security more than doubled in the NPC annual budget of 1985 - 1986 over that estimated prior to operation by that organization.

6-3. Accountability of Private Management

One commonly raised concern over privatization is private management's accountability for defending the interests of the public, a defense that is expected of public authority. This concern is reasonable, since, even though these non-profit management organizations have not profit motive, self-interest

might still be served within their operation of public open space. Not-for-profit organizations often have their own interest in perpetuating their tasks and institutional involvement in order to secure places of staff and the organization's leaders. Nevertheless, the concern is often perceived, as opposed to actual and grounded on a factual understanding.

Privatization as it has been employed in the cases discussed in this thesis is meant to be, in principle, an instrument for the delivery of policy programs. That is, a basic premise of these privatization cases is that a primary task of the private management organization is to undertake immediate operations and management, not to take over the public authority's power and role in shaping policy decisions for open space governance. Although operational decisions made by private management certainly involve a dimension of policy-making, any ultimate policy decision still lies within the domain of the public authority. The management agreements that exist in two established cases, Bryant Park and Pioneer Courthouse Square, clearly specify the ways of retaining public control in the on-going operations and in contingent situations, as reviewed in the following.

Maintaining public control in the on-going management process

In cases of privatization, three principal methods for maintaining

public control are employed: public representation within the governing structure of the management organization, regular performance reviews and approval requirements.

Public representation within the governing structure of the private organization:

Public officials representing related public agencies serve as members of the board of directors of the management organization. Usually, a park commissioner joins the board to take part in making critical management decisions. This arrangement ensures that the public authority's concerns are represented in the shaping of policies and program directions, as well as helping to prevent possible conflicts between the park agency and the management organization. The BPRC's mandate dictates that one third of its board of directors are to be appointed by the Mayor, whereas, the NPC has one public representative on the board of seven members. The heavy public representation on the BPRC board is intended to intensify the watch-dog function built into the organization. The BPRC contract runs for a term of 5 years, much longer in comparison to the NPC of Pioneer Courthouse Square agreement which is by yearly renewal.

Regular performance reviews: Park agencies undertake regularly performance reviews in conjunction with renewal of their agreements or budget approvals. The NPC's performance is reviewed annually along with renewal of their management agreement. The BPRC furnishes monthly reports to the Parks Department for review of

operating budget allocations. Furthermore, a comprehensive performance review of the BPRC is to be conducted by the Parks Department every three years, including reports on financial administration, maintenance, capital improvements, and the operation of concession. Unless there is evidence of serious mismanagement, the purpose of a performance review is to provide constructive input to the management organization and to update its performance for the benefit of the general public.

Approval requirements: A management organization retains discretionary power over several important management functions -- budget, security, improvements, programming and scheduling of public events, leasing, capital improvements, and day-to-day maintenance (the last three do not apply to the Pioneer Courthouse Square case). Among these functions, decisions which suggest larger consequences are subject to approval of the park agency. These include budget allocation, leasing, and capital improvements. Programming and scheduling of public use of the spaces do not require prior approval but general consent is necessary. As explained in Chapter 5, the NPC has to acquire annual consent from the Park Bureau of the general direction for programming, but exercises sole discretion of the day-to-day administration of permits and scheduling. The BPRC, on the other hand, administers all scheduling but must report every event they program beforehand for review by the Parks Department. The BPRC cannot issue permits for any event that is objected to the Parks

Department.

Ultimate public control and responsibility

The methods for maintaining public control within an on-going management process -- public representation in a governing structure, performance reviews, and an approval requirement on key management decisions -- have been discussed. These measures are basically intended to foster the effective operation of a private organization with the support of public agencies, while avoiding the necessity of the public authority's intervention in day-to-day management decisions. If properly employed, these methods could achieve their purpose -- the proper balance of private and public control in on-going management.

The questions remaining are several. Will public control be maintained in the long-term future of park governance? Is the private operation of public parks likely to be perpetual or transitory? And will the private operation of parks turn into a liability for the public sector if contingencies force a cessation of their ability to manage? What kinds of risk does the public sector assume in pursuing the privatization of public parks?

It should be noted that private management is a contractual arrangement based on mutual agreement. As such private management

is intended to continue as long as the conditions of the management agreement are met by each party. Since privatization has been pursued as a special case, rather than as an option generally applicable to all public parks, the management agreement specifies contractual terms and the various conditions to be met by both parties. Furthermore, the management agreement specifies the handling of the allocation of responsibilities in case of a contingent situation and/or termination of the management agreement.

Both BPRC and the NPC of Pioneer Courthouse Square have been in operation with clearly documented agreements with their respective cities, and they present ways of dealing with possible contingent situations through indemnification, insurance policies and termination policies. Since the NPC does not assume any maintenance responsibilities, its obligations in indemnification and termination conditions are rather simple: The NPC simply files a public liability and property damage insurance with the City Auditor; and upon termination, any contracts or leases conducted by the NPC are to be reassigned to the City. Since the BPRC takes care of both maintenance and operation, its on indemnification and insurance policy agreements, as well as termination conditions, are much more elaborate.

Several issues contained in the management agreement for Bryant Park are worth further explanation:

-- Mutual indemnification: Sharing of responsibility by both the private organization and the City is a basic principle throughout the period of operation. The BPRC and the City are to indemnify each other when situations arise: The BPRC for the consequences arising from the operation or use by the BPRC; and the City for the consequences arising from the City's and third parties' actions.

-- Indemnification within the limits of insurance: However, the BPRC's indemnification is limited within the capacity of its insurance. The BPRC files public liability insurance as well as umbrella liability insurance that covers all liabilities and risks covered by the standard forms of such coverage commercially available. The BPRC includes the City (and the Public Library) as named insured on all policies, thus dispersing the responsibility.

-- In case of damage or destruction of the physical facilities of the park: In case of minor physical damage, the BPRC takes responsibility of up to \$100,000 (which is about 10 % of its operating budget), using the operating budget or the Reserve Fund. In case of a "Major loss", which means damage which would require, for restoration, "a reasonably estimated expenditure of more than 30 % of the full insurable value of the park immediately prior to such damage" (the Management Agreement of Bryant Park, p 45), the situation is more complicated: the City or BPRC, in the order, may elect to repair, but is not obliged to conduct restoration. When restoration does not occur, the agreement is terminated.

-- In case of termination of the management agreement: In the case of terminating the management agreement for any reason -- a case of default by each party or no renewal of the agreement for whatever reasons -- all rights, title, and interest in and to the park, including all concession facilities are to revert to the City. Upon termination, the BPRC has a right to redeem only unexpended private funds including grants, benefits, contributions, etc. which come to the BPRC for charitable purposes and are to be used at their discretion, even when the termination is caused by a default on the part of the BPRC.

-- The ultimate public authority: The City has authority not to renew the management agreement as well as to terminate the management agreement on its election not to continue. In addition, the City can elect to terminate the Terrace Agreement giving the right of concession operation to the BPRC, before the 15-year-term ends. In this case, a "reentry payment" is to be paid for the amount that the BPRC has invested for the capital improvement of a restaurant/cafe.

The conditions explained in the above suggest is that the management agreement is structured to divide responsibilities for any contingency between two parties, not necessarily on equal terms, but in a balanced way. Private management is basically responsible for day-to-day management, with the support of insurance policies. Therefore, relatively free from major liabilities that might occur in a serious situation, the private organization can securely operate. It is the public authority that is ultimately responsible for what might happen in some unforeseen, contingent situation. This arrangement may appear favorable treatment of the private management organization, by providing it waiver of major responsibilities. However, the arrangement is understandable in that it takes into account the risk undertaken by a private management organization operating with responsibility for self-financing and the uncertainties evident at the start of operation. The other side of this arrangement is that it allows the public sector, by assuming the ultimate responsibility, to remain as a key actor in policy decisions.

6-4. The Role of the Public Sector: Provider vs. Producer

The management arrangements of the cases of privatization presented are structured for the maintenance of public control as regards essential policy decisions, and for private management to provide

services required for day-to-day operation. The distinction of responsibilities between policy-making function and operation function by public and private parties is the fundamental characteristic of the privatization of public open space. Both roles are vital to successful privatization. What then, are the specific roles the public sector should play? Four specific tasks are required of the public sector: 1) to provide organizational, financial, and legal support, 2) to build public acceptance, 3) to clarify policy goals in terms of the expected benefits of privatization, and 4) to intensify the role of oversight of the performance of private organizations involved.

The public sector's commitment and support in providing workable mechanisms is crucial to successful implementation of privatization. The necessary legal provisions, explained earlier, can not be made without the strong endorsement of related public agencies. The commitment of the public sector should be present, since private initiatives often become weakened after initial enthusiasm has passed, slowing the progress of implementation. Copley Square illustrates this point. The city government has been rather ambivalent to the redevelopment of the square, in part due to the small portion of public funding committed and because of a lack of clear policies regarding private development of a public open space. When private fund-raising was not as successful as expected, and the CSCC lost some initiating members, a long delay, coupled with inactive public commitment resulted. In contrast,

Pioneer Courthouse Square exhibited relatively strong public commitment during the planning process, recognizing the initiatives of citizens to raise needed funds. Furthermore, financial commitment in the early stages of planning is clearly helpful to present public commitment. For example, in the Pershing Square case, the park agency, as well as related agencies (the Community Development Agency, the Cultural Affairs Department, the City Council, the Mayor's Office, etc.) showed their commitment not only by taking an active role in the planning process, but also by providing the financial commitment covering about half of the development cost.

The building of public acceptance depends upon public initiatives, regardless of the degree of private initiative for pursuing privatization. The way in which city government is involved in the development process influences public reactions toward privatization. For example, a BPRC's strong leading role in making the redevelopment scheme made the City's role relatively subordinate, in turn, intensifying public concern. The implementation of Pioneer Courthouse Square undertaken by public agencies, helped the recognition of controversy during the development process. For example, controversy over the design program between conservatory and open-area was resolved, in the end, by the City's endorsement of public opinion. This trade-off helped later in the smooth delegation of management to the NPC, which was recommended by business groups.

Making policy goals clearly and the communication of these goals to the general public are important public functions, which can also contribute in build public acceptance. Often, the actual privatization arrangements are not communicated well enough to the public because of the complexity of terms and business transactions, (especially in concession operations,) resulting in an accumulation of negative views. Bryant Park is a case in point. much of the planning work between the BPRC and the Parks Department was done behind closed doors (especially the contract terms for the original large-scale restaurant.) In retrospect, it can be inferred that the City's delegation of the planning initiative to the BPRC did not help in the BPRC's pursuit of major renovation work. Over the process of development, the details necessary to understand the actual mechanism for the privatization of Bryant Park seldom came to light. In this context, it was difficult to expect that the public would be kept informed of the choices that must be made. As often happens in public debate, perception superceded substance. In contrast, in the Pershing Square, which the PSMA also took a leading role, during the early stages of planning the city government made clear the types of management functions the private organization would be expected to perform. Combined with Los Angeles' generally liberal attitude toward private initiatives, The clarity of the public statement of policy goals helped the development of Pershing Square progress with little arduous debate.

By delegating the daily management functions to a private organization, the public sector must emphasize its overall management role in dealing with organizational relationships. The transformation requires effort. It should be noted that privatization is not always a comfortable idea to the public sector either, especially to park agencies which may have to relinquish some of their functions, thus reducing direct control over park governance. Within the public sector, opinion divided regarding privatization, and there is some confusion about the administrative role required for handling privatization projects. City governments, thus, must clarify their roles in order not to create conflict among government agencies. Furthermore, for effective monitoring of private performance, related public agencies need to clarify performance standards as well as improve channels of communication with private organizations.

Conclusion

The management aspects of privatization have been examined in this chapter, discussing the necessity, effectiveness, and accountability of private management as well as the role of the public sector in carrying out privatization projects. Private management is justifiable on the grounds of changing open space needs which demand more complex and enhanced management functions than are normally conducted by the public sector. In cases of

privatization however, the conditions necessitating private management, especially the degree of transferred management, have been judged by circumstantial factors, such as the degree of private involvement in the development process and the financing mechanics, rather than by the intrinsic merits of private management. The effectiveness of private management is dependent upon the stability of financing, which is in turn, reliant upon private financing, particularly the revenue from income-producing uses. This dependency on private financing suggests a possible fluctuation of revenues and a large degree of private discretion. Despite the financial independence of private management, the management agreement adopted in privatization cases specifies cautious measures through which public authority can be maintained. Taken altogether, privatization cases can be characterized as a circumstantially necessary and procedurally cautious, service delivery system which is built upon substantial program changes for open space.

CONCLUSION

**PROSPECTS FOR
THE PRIVATIZATION OF
PUBLIC OPEN SPACE**

Issues of privatization have been examined in terms design, access, use, and management. In this concluding chapter, general discussion will focus on two issues based on the examination of the operative dimensions emphasized in the preceding four chapters:

1. What general recommendations can be made for future cases of privatization?, and
2. How can privatization of public open space be understood in the face of the prevailing trend towards the privatization of public services? What are the ideological implications to be drawn from the privatization of public open space?

The first question is concerned mainly with making privatization work, the second ponders the implications of privatization in the broader perspective. Before further discussion, this thesis has presented the following findings.

I. Findings from Privatization Cases

The privatization of public open space has triggered concern and debate over its effectiveness and impact, concerns that each of the privatization cases presented have tried to accommodate during the process of development and arrangements of management. Current cases of privatization have been implemented by way of prudent procedures embedded in substantively bold programs. They have been carried out through complex and cautious institutional arrangements: by establishing a private, not-for-profit organization as a vehicle that links business groups and the public sector and that carries out some or all of the planning, design,

development, fund-raising, and management; by introducing a public participation process to build up constituencies; by employing a design competition (in most cases); and by instituting a detailed management agreement between the public sector and a management organization. Nevertheless, privatization goes beyond a mere substitution of the public sector's functions but is often accompanied by substantial program changes drawn from business' approach to restore the stability and control of public space. This has been accomplished by the introduction of a revenue-producing use in public park lands, accommodation of various user attractions, and adoption of systematic operations and sophisticated security measures.

Extensive private involvement in the development and management of public open spaces inevitably addresses the question of control--who is in control, what is to be controlled, how control is practiced, and on what grounds control is justified. In cases of privatization, the control issue, which touches upon all aspects of open space development and management, has been shaped by the contrast between public and private. However, in privatized cases, the interplay between public and private in terms of institutional divisions and their respective interests is reciprocal, rather than of dominance/subordination. Such interplay can best be characterized as a combination of "public process and private influence": That is, private interests are advocated but subjected to conditioning through the public process, and thus remain as an influential but

not determinative in the shaping of open space design and management.

The preceding four chapters have shown this interplay, in which public values and private interests are constantly accommodated in relation to one another. Thus, in determining a design character, privatization cases emphasized 'balance' as a guiding principle. Private sponsors' interests were represented in a modified manner, as most evident in the incorporation of commercial uses within public open spaces. Private influence on design selection and development has been exerted in a subtle way, producing sometimes complacent and compromising design approaches. Flexibility and open-endedness of a design were emphasized as necessary features in order to accommodate a range of input from various interest groups and to adapt to future changes.

A realistic, but sensitive approach in dealing with the public access issue in privatized cases indicates a combination of traditional and progressive approaches toward social control. Despite the privatization cases examined did not reveal any explicit positions concerning social control, a situational definition of public access was emphasized over the ideal notion of public access in detailing the design and operation of security and maintenance. The privatization cases in actual operation prove to be effective in meeting the most often claimed goal -- enlivening public open spaces with various programmed cultural events.

However, the control of public use of these open spaces by private management through permit administration and extensive programming, together with security-oriented measures such as private security force makes privatized public open space highly structured and of a "moralized" character, at least in comparison to ordinary public spaces. This result provides reasonable grounds for concern over the private control of public spaces, regardless of the cautious measures for monitoring private management's performance that are included in management arrangements. A still more troubling issue is that private management's effectiveness is dependent largely on revenue-producing uses of the public space.

It must also be noted that privatization has been pursued in circumstantial applications, enabled by case-by-case solutions. Resolutions on legislative and regulatory issues were required, to which special arrangements have been made within an existing legal and regulatory framework. Thus, the principle of public provision of open space is still being maintained and only the tools necessary for implementing privatization have been instituted to realize each case. A comment by the former Commissioner of the Parks Department of New York pointed to the experimental nature of privatization: "These kind of things are very case-by-case and elements that are appropriate as a public policy matter in one park are drastically different in another park."¹

¹ New York Times, October 3, 1983.

II. Recommendations for Future Privatization of Public Open Space

The privatization of public open space is likely to be attempted with increasing frequency, unless there is a drastic change in the development context and/or public management. There are already some cases in which privatization is being considered. For example in Boston, the Post Office Square block, currently a site of a public garage, is to be developed into a public park through a public-private partnership initiated by abutting corporate groups, and Pemberton Square, which is surrounded by public institutions and commercial use is under consideration for a similar plan to improve a situation of lack of use and amenities. What recommendations can be suggested for future privatization cases?

Recommendations can be made in three areas:

- A. Identification of the feasibility of privatization, i.e., contemplating whether or not privatization is applicable in a particular context,
- B. Shaping the privatization process to avoid unnecessary political entanglement or delay, and
- C. Institution of workable mechanisms in order to ensure better and more accountable services provided by private management.

A. Identification of the feasibility of privatization

Four considerations should be taken into account to determine the feasibility of privatization; the needs of the project for functions that are best provided by private involvement in development and management, the degree of private support

available, the willingness of the public sector to pursue privatization, and the level of public acceptance toward privatization.

The needs of the project: Privatization is, first of all, a means for better service delivery. A project has to clearly exhibit the need for functions that are best provided by private involvement in development and management. Nevertheless, often ambiguous at the initial planning stage is the determination of whether the need for private involvement is only to promote financial support or for both financial and organizational assistance. Usually, the project needs, in terms of necessary programs and management functions, become articulated, as the project progresses. One method of handling this problem is to prioritize needed services according to the degree of urgency and long-term desirability, through which types of private support may be projected at the outset of planning.

Degree of private support: Privatization is only possible when there is enough support and willingness by adjacent private groups to provide financing, services, and attention. Initial enthusiasm of private groups should be weighed as to whether it is temporary or reliable for the long-term. Characteristics of private groups in terms of their scale, permanency of their presence in the context, and their particular interests in the provision of open space provision must be analyzed to project the feasibility of

continuing private support.

The willingness of the public sector: Similar attention must be given to the public sector which is in a critical position for determination of whether or not pursue privatization. Availability of financial resources and of administrative support from the public sector must be examined, as well as the public sector's ability to mobilize private resources and their willingness to lend public accountability in implementing privatization.

Level of public acceptance: As emphasized throughout this thesis, privatization of public open space contradicts the general desire for public presence in public space. It should also be noted that the willingness of the public sector to pursue privatization, which has the responsibility of acting on behalf of their constituency, is often influenced by the level of public acceptance. Public awareness of privatization varies in different situations, depending upon the existence of precedents and their performance in particular local settings. At the initial stage of planning, public reaction should be carefully examined, to which specific strategies for implementing privatization must follow.

B. Shaping the privatization process

Once privatization is judged to be applicable, the process of implementing the project should be carefully designed in order to prevent avoidable public debate or delay of implementation. The

process is of foremost importance, since privatization is a complex mechanism that involves many interest groups as well as various public agencies, creative financing mechanisms, and often legal provisions. Furthermore, privatization is often accompanied by negative public reaction, which may be a matter of perception. For designing a successful process, public and private commitment must be made clear to the public through well designed communication procedures.

A clearly made public and private commitment: The development process of privatization is shaped according to which sector takes the project initiative. Each situation contains possible problems of its own: When the private sector leads the development process, commitment to project implementation may falter (e.g., Copley Square) and public resistance may persist (e.g., Bryant Park); when the public sector takes the development initiative, solicitation of private support requires more negotiation (e.g., Pioneer Courthouse Square). All of these situations can cause delays in implementation, often coupled with arduous public debate over the proposed programs of privatization. In order to avoid delays it is advisable that financial commitments be settled during the early stages of planning. Frequently this is not easily accomplished, as privatization proceeds through a process of continuous negotiation. What is needed, in the initial stages of planning, is to secure basic, necessary funding, upon which follow-up fund-raising strategies can be built.

Clearly communicated procedure: A procedure for public education is critically needed in order to build up public acceptance toward privatization. A project that is led by the public sector, which has (or at least has to appear to have) public accountability, could reduce public resistance (e.g., Pioneer Courthouse Square). When private sector takes the development initiative, the public participation process is even more critical. Two forms of public process must be pursued. The first is participation during the programming stage in order to identify users' needs and expectations (as employed in some of the existing cases) and the other, more important, is the clear communication to the public of the needs, benefits, as well as detailed management arrangements of privatization warranting important changes to open space functions (e.g., the public sector's role of monitoring private management). Without communicating substantive programs to the public, debate is likely to be more symbolically loaded, colored by different perceptions, as in a case of Bryant Park. Bringing rationality into public debate is not an easy task for the involved private sector. Thus, the public sector's role in public education should be strongly taken.

C. Institution of workable and reliable mechanisms

Once privatization is implemented, its performance depends upon the various mechanisms instituted during the course of that particular privatization project. Three key components require particular

attention: the allocation of management functions, financing mechanisms, and performance standards.

Appropriate allocation of management functions: The extent of transfer of management functions is often closely intertwined with which sector has taken the initiative in the development process, as seen in the existing cases. Generally speaking, a strong private initiative results in complete transfer and a public initiative results in partial transfer. It should be noted that total transfer is not inevitable in every case of privatization. Partial transfer of the functions in which a private management organization may be particularly effective, such as programming, fund-raising, and promoting, may be suitable in many cases. The extent of transfer, total or partial, must be determined without overriding influence by the private sector's initiative. Particularly, the transfer of two critical functions, concessions administration and permit administration, both influential in controlling public use of open space, should be carefully decided. Once judged to be a necessary transfer, public monitoring mechanisms should be strengthened to oversee the performance of these functions.

Stable and reliable financing mechanisms: Financing development and management of a privatization project is most critical to the success of privatization. Existing privatization cases rely heavily on private financing: 40 - 60% for capital improvement and

20 - 80% for management. Reliance on private financing itself is not arguable, but must be made on three conditions: a firm commitment -- both short-term and long-term -- must be secured, private influence must be shielded, and too much commercialization must be controlled. The dilemma of privatization is that these conditions are not easily met, as best illustrated in the heavy reliance on the revenues from concession operations. Before turning to commercial revenue generation, other financial sources should be sought. Some examples are special tax-assessments employed in the Business Improvement District of Bryant Park, a maintenance endowment in Copley Square, and the Pioneer Courthouse Square arrangement in which the public sector provides half of operating costs.

Clear performance standards and performance reviews: A private management organization exercises discretion in performing its assumed management functions, necessary for the organization's effective day-to-day administration. In order that such discretion is practiced in an accountable manner, performance criteria should be clearly drawn regarding acceptable levels of maintenance, rules and regulations concerning public use, extent of programmed use, and design changes. Furthermore, monitoring mechanisms should be instituted requiring reporting and regular performance review.

It should be stressed finally, that privatization, to be successful, should be built upon a continuous relationship between

involved public and private parties. The public sector, continuing the allocation of tax appropriations, should take an active role in the decision-making process, monitoring the performance of private management, and eventually assuming responsibilities of what might happen in contingent situations, i.e., the default of private management. Continuous engagement of the public sector in management decisions is also required for building up the credibility of private management. Management agreements should spell out not only the exact responsibilities of each party, but also the expected outcomes and the criteria for performance evaluation, ensuring long-term mutual trust.

III. Privatization: An Ideological or Instrumental Question?

The recommendations provided above were made in regard to making privatization work as an effective service delivery system. However, there is more of concern regarding the privatization process, if privatization is viewed not as a temporary solution but as a viable, long-term option for the governance of open space. Fundamental questions can be raised regarding the general applicability of privatization and the ultimate repercussions in terms of public engagement in the provision of public open space.

Privatization of public open space is part of a larger trend evident in various public services. The privatization of public

services has taken many different forms: transferring a public operation to private organizations (of which privatization of public open space is a part of), turning state-owned enterprises into private operations, more frequently practiced in other countries throughout the world than in United States, sales of public assets, including public land and public infrastructure, or contracting-out services or vouchers.

No doubt, maximization of efficiency and improvement of performance are common goals sought in privatization. Within these goals, it is often argued that privatization is merely a technical instrument of policy. This argument may be true of some public services in which the overriding concerns are efficiency and effectiveness of management. For example, privatization of sanitation, waterworks, transportation systems, sports facilities, etc. can be evaluated in a relatively straightforward manner: an evaluation of their performance can be based upon the costs and benefits in monetary terms.

However, in other services, issues of privatization go beyond an instrumental question. Equity, access, and justice are equally significant issues in privatizing programs such as education and social services. Privatization of these and other services such as the exercise of justice and coercive power, national parks or wilderness raise symbolic consequences. Evoked is the fading of such public ideals as social justice, fairness, and public

responsibility in grappling with social problems. Certainly, the symbolic load of privatization should not represent the main, categorical objection to all privatization. Since privatization is conveyed by a multitude of implementation approaches and services, "we need not accept or reject all the elements as a single package." (Starr, 1987) Some diversification of the delivery of public services is needed to cope with changing demands, and various perspectives are needed to deal with the accompanying issues.

Then, how ought privatization of public open space be viewed? Is the symbolic importance of public open space critical enough to rethink privatization? The privatization of public open space has often been argued against on ideological grounds, as seen in current privatization cases, because public space represents a deep-seated, maybe not intrinsically, but certainly socially and culturally construed public ideal -- that is, a symbol of democracy, egalitarianism, and enlightened culture of a society. This exact argument was used during the park movement of the 19th century to mobilize public resources for the creation of public parks. It was further employed in the creation of national parks and preservation of natural wilderness. These are common legacies, of which management should communicate the clear message that they belong to no private party but to the people as whole.

Taking into account the symbolic importance embedded in notions of

public space, fundamental questions still remain. One is the general applicability of privatization. How far is the privatization of public open space to be carried? Is every public open space a possible candidate for privatization, given private interest in open space provision? Or conversely, is the privatization of public open space always to be disputed?

No doubt, symbolic importance varies with different kinds of public space. Thus, the privatization of prominent public spaces to which a high degree of civic pride is attributed is likely to found objectionable. Central Park in New York or the Public Garden in Boston illustrate this point: the Central Park Conservancy and the Friends of Public Garden, private groups associated with each historic park, remain supplemental to public management. In a similar vein, civic spaces that adjoin public buildings of high stature, for example, Boston's City Hall Plaza, may not be possible candidates of privatization.

Beyond these more obvious examples, there are many kinds of public spaces for which privatization will be the subject of dispute, including parks, streets, waterfronts, or unutilized public lands. What criteria can be used to judge the appropriateness of privatization of these spaces? Contextual factors such as historical significance, degree of public exposure, and cultural importance are certainly to be taken into account. However, these are not absolute but relative criteria which are subject to

differing interpretation. In the existing cases involving spaces of historic importance, privatization took place largely because of private interest in the idea as compared to the particular contextual characteristics. It is not unreasonable to expect that the most critical factor in the consideration of privatization is found in the acceptable degree of change brought about by privatization. That is, a determination of how such changes would impinge on the fundamental values of public space must be made; i.e., the use of a public space as a medium for pursuing private interests such as commercialism and the promotion of corporate groups. A case-by-case evaluation should follow future cases of privatization.

Beyond case-by-case application of privatization, another fundamental issue is the public sector's ultimate stance in open space provision. How widely can or should be privatization practiced? Privatization assumes at least a partial disengagement of the public sector, however temporarily. Will privatization, if widely practiced, incur a larger degree of public disengagement in the sphere of public open space? Or, will the lessening of the burden on the public enable a selective but significant public investment in key open space developments? Privatization cases are still too few to provide enough materials for predicting probable consequences regarding these questions. Conflicting predictions can be offered regarding these questions, based on differing ideological positions.

The reduction of direct public investment might occur, illustrated by the lessening of production of public open space in the urban realm over the last two decades, with a few exceptions created during the period of urban renewal. In fact, the development of the inner city has been dominated by private investment, which certainly has produced open space amenities, yet of very commercialized character. N. Glazer's comment (1984) is worth recollection: While comparing New York and Paris, he noted that the large public investment accompanied by high-level public commitment in managing Paris' public services has made the city work better than New York. in an urban physical structure with longer run staying power, not to mention an abundance of public spaces that enhance Parisians' civic pride.

As an analogy, the Los Angeles Olympic Games was engineered purely by private forces, unlike most Olympic events. The strong public intervention practiced in other Olympic events was due in part to the scale of preparation work required and in part to the symbolic importance demanded by the representation of the nation to the world. Although the Los Angeles event was praised for its financial success and smooth operation, excessive commercialism permeated the operation and low investment was made in capital improvements to the city, which illustrate a probable result of public disengagement.

In envisaging a long-run perspective for privatization, another ideological position can be taken. The role of the public sector in this scenario, will remain basically within policy-making, and actual production will be accomplished by the private sector. Although this position was often offered in the pursuit of existing privatization cases, it has most often been simply hinted upon as justification, rather than carried through as compelling persuasion. As such, current privatization cases are often regarded as expedient solutions to meet current (perhaps passing) situations, which has intensified concern over the impact of privatization.

A persuasive ideological argument should be formulated, if privatization can play a significant role in future open space provision. An inspiring urban vision that presents the city as a working ecosystem comprised of conscientious, careful individual actions made with coordinated efforts, using every resource regardless of sectoral division (Spirn, 1984) can be fostered. In fact, one promising element of the privatization of public open space is its potential to facilitate "democracy." Privatization of public open space diminishes, to a certain degree, elements of democracy such as public information and accountability associated with public management. However, a great degree of participation, which is another important element of democracy, is integral in the development process and could be pursued further in management. Because of the expertise required in dealing with the complex

financial and organizational matters in privatization. participation is likely to be guided by a more populist approach rather than by direct participation; i.e., by incorporating representatives of local interest groups into a governing body or citizens committee or by utilizing local talent and volunteers. By establishing carefully worked out programs that foster participation, the rhetorical terminology that includes 'socialization' or 'communalization', rather than 'privatization', of public open space could achieve some salient truth.

In a way, privatization could offer a departure to a significantly different philosophy for open space provision, that is, the real transformation of delivery of open space from top-down to bottom-up. Creation of public open space in America has often been a deliberate measure of carrying social control in a top-down process, resulting in a limited version of standardized open space types (Cranz, 1982). Caretaking of public spaces by inhabitants and concerned people, an intrinsic merit of privatization, may lead to a significant step forward in the diversification of public open spaces that are tuned for local needs. Existing privatization cases, since they have been driven largely by efficiency, do not seem to achieve this diversification. Commercial uses in combination with an emphasis on programmed cultural uses are too universally addressed in existing privatized cases, resulting in yet another standardized open space image.

One final caution must be made. Diversification of need and localization of control present always the possibility of parochialism -- privatization's negative connotation. Concerns over the possible negative consequences should not, however, mar the prospects for positive progress. Despite many probable repercussions pondered in this thesis, privatization still offers a significant tool for the implementation of policy programs. Whether privatized public open spaces would prove effective in meeting long-term open space needs, as they are claimed, is yet to be seen. Furthermore, whether the privatization of public open space would necessarily incur public disengagement, or might, in fact, play a significant role in a departure towards a new ideology in which private responsibilities encompass taking care of public assets for public functions, is yet to be envisioned.

APPENDIX 1. Privatization Process of Two Cases:

I-1. Pioneer Courthouse Square, Portland, Oregon

Pioneer Courthouse Square is a newly developed open space on a city-owned urban block, previously a parking lot. The development was directed by the Portland Development Commission, and a Citizens' Advisory Committee appointed by the City Council, was actively involved in drawing up programs used in the 1980 design competition. The role of commercial use was put to test in this design competition, from which the winning scheme emphasized an open-square concept as opposed to the business sponsors' wish to build a large-scale conservatory. The controversy sparked after the competition divided citizens, business sponsors, and public officials, delaying the implementation of the plan three years. A voluntary citizen group, "Friends of Pioneer Courthouse Square" was formed to activate fund-raising efforts and to persuade the public sector, hesitant to implement a scheme not supported by corporate groups, to go ahead. Despite this controversy, management by the Non-Profit Organization (NPC) was delegated without much difficulty. The NPC currently provides programming, fund-raising, and security. Maintenance and lease administration is performed by public agency.

I-2. Pershing Square, Los Angeles

The Pershing Square Management Association (PSMA) was formed in 1983 to make improvements to the oldest and only major park in the Central Business District. Initial improvements motivated by preparation for the 1984 Olympic Games was rather cosmetic. Community interests had since grown, resulting in the decision to redesign the whole square. The PSMA continued to play a crucial role by holding a design competition in 1986, the programmatic components having been based on recommendations drawn from community participation. Additional public representatives and corporate sponsors have been incorporated within the PSMA governing structure, the resulting plan for the reconstruction includes an ambitious plan with a \$ 12.5 million capital improvement budget. Functions of the PSMA are exclusive, covering all development and management functions -- construction, fund-raising, lease administration of concessions, scheduling, programming, and maintenance. Currently, the winning design is being further developed, again implementation is being delayed by fund-raising difficulties.

APPENDIX II. THE DESIGN COMPETITION PROGRAMS: EXERPTS

II-1. Copley Square: Excerpts of The Design Competition Programs

B. Character

Copley Square is located on a line separating a low-rise historical district from a zone of massive new construction. Its reality is one of contradictions:

- o new/old
- o small/big
- o culture/commerce

1. A design for Copley Square should create a place of beauty which helps to bring into balance these physical and social conflicts. The new Copley Square should embody the idea of a city as a place of community and cultural meaning -- a place wherein the lives of city residents and workers are enriched.

- a. The design should employ natural materials (i.e., trees, plants) as well as high quality paving, and masonry materials to create a warmly human environment:

- o The location of trees should define vistas, passages and activity areas. Other plant materials should be chosen to ensure a presence of seasonal color and green throughout the year.
- o Paved areas should be comprised of varying patterns and textures, reflecting functional use and sensitivity to color and the pattern and style of the surfaces of the surrounding architecture.
- o Flower beds should lend color to the space and reflect seasonal change.

- b. The design for Copley Square should provide a public open space which is flexible and accommodating of various uses which will alter with the changing seasons. It should avoid emphasis on the fashionable and provide a suitable setting for a range of activities, no matter the trend. There should be areas for quiet enjoyment and reflection as well as a place where a crowd can gather.

C. Functional Uses of the Square

1. Informal Use: The design should primarily promote informal use of the Square and reflect activities of a successful urban place including:

- o ease of access to surrounding streets
- o multi-functional, flexible spaces
- o ease of public surveillance and control

Copley Square should function chiefly as a congenial setting for conversation and unplanned activities. Only secondarily should the Square be dependent for its animation on formally programmed events.

There will be times, such as night, weekends, or during the winter and holidays when special events may be staged. The Square should be a place where passers-through will want to stop, eat, sit, read, observe city life, chat and relax. The elderly should be attracted to sit and chat; mothers should want to bring their children; the Public Library should see it as a place to hold its children's reading hour on a nice afternoon; shoppers should feel comfortable stopping to relax; workers should find a bench on which to eat their lunch. Thus, the Square should be a pleasant, inviting and safe place for many different groups.

People should be offered seating of various types and scales, creating different types of places to sit and relax; places to sit alone or with a companion to watch city life, physically but not visually removed from the flow of pedestrian traffic; places to sit around tables. Other seating areas must be organized in ways that encourage social interaction and should provide a natural audience for street performers. Making the Square a place that greater numbers of people enjoy will help displace undesirable activities currently in the Square, such as drug dealing and petty crime, characteristic of desolate urban spaces. Experience has shown that the presence of people is the best deterrent of those who threaten security.

- a. Seating: Overall, at least 1,000 persons should be able to find seating accommodation of various kinds:

- o Fixed seating: At least 1,050 linear feet of fixed seating should be provided in various spatial arrangements to accommodate up to 700 people.
- o Flexible seating: Movable chairs should be provided for 300 persons.

2. Food Service: The availability of food and beverage attracts people to any outdoor urban space. The provision of food and beverage should be accommodated on a seasonal basis from a temporary arbor-like pavilion structure. This structure should be de-mountable, sturdy and wind resistant. The food service should be accommodated in an area for 150 seats around open air tables sheltered by umbrellas and/or trees. The operating period of the pavilion could be from May through October, weather permitting. Food preparation is to be off-site with the pavilion containing equipment and space necessary for service. The overall character of the food service area should reinforce the dignity and quality of the Square and not resemble or suggest fast-food service.

- o It is estimated that the design should accommodate from 300 to 600 square feet of serving area in a light frame, temporary, pavilion-like structure.
- o The design should provide a space for 150 movable chairs and stationary tables in an open air layout.
- o The food service area should be in proximity to sidewalk areas and not obstruct pedestrian circulation, nor should it conflict with access to Trinity Church and the St. James Avenue entrance to the John Hancock Tower. It's overall character should contribute to creating a place of beauty and quiet enjoyment.

3. Market: Throughout the year, Copley Square could host a series of markets for the sale of seasonal products. Currently a Farmers Market operates on the Square two days a week from mid-June to mid-October and could serve as a model for similar ventures. Approximately twelve growers now sell flowers and produce from pick-up trucks and station wagons parked in a circle on the Square.

More appropriate and attractive arrangements can be made for the Farmers Market as well as for other groups. At various times of the year the market area could accommodate seasonal sales, such as flowers in the spring, pumpkins in the fall, Christmas trees, holly and wreaths in the winter, and the like. The designer should develop a design for the market and designate a specific site for about a dozen market stalls.

- o Space should be designated for a seasonal Farmers Market-type operation, which, when not occupied by sellers, must serve the informal needs of visitors and be an attractive component of the Square.
 - o Temporary market stalls, the location of which would be designated in some manner should be provided, permitting daily set-up, take-down, and removal.
4. Vending: Copley Square could also host a modest number of vendors, possibly with wheeled carts. Unique foods, specialty and seasonal items will be encouraged. Carts must be removed at the close of the day.
- o A variety of locations should be designated which are consistent with the overall design approach and the dignity of the Square, and which do not obstruct circulation patterns.
5. Programmed Activities: A design for Copley Square should not rely on highly-promoted events and attractions for its meaning and purpose. It should primarily serve as a place of beauty which is quiet when empty but never dull and unattractive. However, the value of public space in enhancing the life of the community must not be overlooked. Planned events can reinforce the meaning of

local institutions and political processes that shape daily routines. These might include festivals, political events, holiday events and cultural events, such as: ethnic and neighborhood festivals; flower shows; Christmas and New Years celebrations; theatre, dance and musical performances; and political debates and rallies.

To accommodate scheduled performances and other activities on the Square, the design should provide an inviting, open-air space to accommodate up to 300 persons, sitting and standing.

- o The space should be flexible enough to accommodate many uses.
- o The space should be pleasant and attractive to the users, whether the users are conversational groups or 300 spectators.
- o The design of the space will necessitate an understanding of the need for supporting equipment and services: lighting, sound, electric, telephone, the storage capacity to render the equipment hidden; and seating which may be fixed, movable or combinations of the two, depending on design treatment.

6. Trinity Church: As a result of the 1965 Competition which joined several parcels of land to create its present form, Copley Square serves as the front door of Trinity Church. The design of the Square and consideration of its use are inseparable from understanding the Church's formal relationship to the Square and accommodating the needs of Trinity parishioners.

- o The design should minimize conflicts between activities on the Square and the Church's ceremonial occasions, such as weddings and funerals, as well as weekly services and daily activities.
- o The design may wish to recognize the original Trinity Church triangular site which influenced Richardson's design.
- o Parking stalls for six officers of the Church should be located in proximity to the Church and on Church property in an unobtrusive location, possibly along St. James Avenue.
- o While most parishioners, tourists and visitors use the front doors of Trinity, the Clarendon Street entrance serves a significant arrival and exit function, particularly in regard to special occasions and the conducting of Church affairs.
- o The design should incorporate the present curb cut and forty-foot radius cul-de-sac which provides vehicular access to the front entrance of Trinity Church.

D. Design Information

Zoning changes and zoning exceptions have created a unique composition of building heights and volumes surrounding Copley Square. Along the North side of Boylston Street, building heights are limited to 155 feet in

a protected architectural district. In contrast, the south sides of Boylston Street and St. James Avenue presents building volumes and heights that vary dramatically from the architectural district. While capitalizing on this opportunity for views and vistas, the design for Copley Square should be guided by notions of simplicity, elegance, clarity of purpose, attention to detail, quality of material and respect for tradition. Copley Square is well-furnished with architectural monuments - the New Old South Church, the Copley Plaza Hotel, the John Hancock Tower, and the recent Westin Hotel. It is renowned for the presence at its edges of the Boston Public Library and Trinity Church.

The design should be shaped, in part, by the approaches to and views of these structures. Consideration of spatial experience must be from the point of view of pedestrians, both within the Square and along the periphery. (See Appendix V, Background Technical Information.)

1. Relationship to Streets: Copley Square should offer an easy flow from the surrounding streets, having as many entrances and exits as possible. To facilitate ease of surveillance and social control, major seating and activity areas should be visible to passing pedestrians and motorists. The location of activity areas, when appropriate, should take advantage of existing pedestrian movement along Boylston and Dartmouth Streets. Ease of visual and physical access and a sense of continuity with life in adjoining blocks and streets should be emphasized.
2. Lighting and Environmental Controls: The design of Copley Square should be beautiful and attractive day and night, and provide, where possible, design features which mitigate harsh climate conditions.
 - o Adequate and attractive lighting to enhance nighttime enjoyment of Copley Square should be an integral part of the design.
 - o Wind comfort criteria should be met through wind abatement strategies, where possible, providing protection for outdoor eating, outdoor seating, walkways and outdoor performance areas.
 - o Where appropriate, consideration should be given to the acoustical requirements for programmed activities.
3. Storage: Storage of equipment and materials on the surface of the Square is undesirable. Provision should be made for limited storage of approximately 400 square feet. The storage area should not be accommodated in a free-standing structure, but may be located partially or totally below grade, for such items as:
 - o portable stage equipment
 - o movable chairs
 - o maintenance equipment
 - o lighting and electric controls
 - o telephone equipment

APPENDIX II-2. Pioneer Courthouse Square:
Excerpts of The Design Competition Programs

6. QUALITY AND USE REQUIREMENTS

6.1 The Controlling Concept

The Square will be the central feature of the downtown and as such should be distinctive, dynamic, elegant and inviting and unique to the area. The total Square and its environs should be oriented around a single, predominant concept which will serve as a strong, positive attractor to the downtown.

6.2 Functional Requirements

The Square should be a day and evening, all season, all weather, people-oriented space. It should provide for features and functional areas to attract the general public to the downtown and to meet those cultural, open space, shelter, and recreational needs of the general public. Any commercial uses will be limited to those which are supportive of and secondary to the requirements of this section.

6.3 Design Requirements

The overall Square and structures must be compatible in design and scale with the Pioneer Courthouse, Transit Mall and surrounding historic structures. Any major structure in itself should be sympathetic to the existing scale and textures of the area. The Square should be skillfully designed to offer a variety of spaces that are multi-functional and convertible to different uses, yet integrated with and secondary to the Controlling Concept.

The Square should include qualities of successful urban spaces. Specifically, places of refuge, objects of interest, information and orientation.

The design should recognize the desire for ease of public surveillance and control. Detail considerations could include limiting vegetation height, avoiding clustering of vegetation to provide concealment, providing emergency phones, and adequate lighting and minimizing sight obscuring walls.

The design should take advantage of the height differential across the site and may consider potential use and expansion of the existing sidewalk vaults on Broadway, Morrison and Yamhill.

Any structure may be of more than one level, but uses at grade level should be active, people-oriented functions. Any structure should not preclude the use of open space. Utilization of sidewalk vaults can also increase the available enclosed space. Enclosed space shall have the potential for controlled access.

Provision should be made for partial cover/shell for art/music/drama activities. This may be temporary or permanent, free-standing or incorporated in a major structure.

Provision should be made for a public information center and general support facilities.

The Square and its facilities should have the flexibility to support and reinforce major seasonal events within the total Project Impact Area.

Adequate provisions shall be made for electrical connectors, tie-downs, and anchors to allow for changing use of any open and enclosed space.

The Square design should recognize the significance of the Square relative to Portland's history.

6.4 Budgetary Guidelines

The maximum estimated contract cost as provided in Section 19.3 shall be within the project budget of \$2,900,000. The Square should be of the kind and quality that will attract major contributions from the private sector. Maintenance and operating costs shall be minimized through design considerations, options for potential revenue sources, and energy conservation features.

7. CITIZEN ADVISORY COMMITTEE RECOMMENDATIONS

The Citizens Advisory Committee has recommended that a glass conservatory-type structure housing seasonal and permanent botanical exhibits as well as other features fulfill the need for a major, positive magnetic attractor for the Square. If included in the Square design, the structure must be of sufficient size and quality to provide a display area that is continually attractive to the public and that permits easy change of displays. Provisions should be made for a wide variety of indigenous plant life, both permanent and seasonal, and for the inclusion of some ornamentals.

Provision should also be made for particular activities that generate revenue, i.e., a small shop and a tea/coffee room with access to the outside (sidewalk cafe).

Within the enclosed area, provision might be made for a limited art/sculpture display area, fountain, aviary or small animal exhibits from the zoo.

8. DEVELOPMENT OPTIONS

Any design proposal shall satisfy the Quality and Use Requirements of Section 6. The designer has the option of including a public conservatory as described in Section 7 or a development alternative which can better fulfill the objectives of Section 6.

APPENDIX II-3. Pershing Square: Excerpts of The Design Competition Programs

B. PROBLEM STATEMENT

Pershing Square, as it exists today, lacks a strong identifiable character. It has minimal park amenities such as seating, shade, and lighting. Programmed events such as concerts and increased maintenance and security have not substantially changed the park's image. In evaluating redevelopment issues of the park today, it is clear that these issues cannot be solved by a simple face lift. Some of the redevelopment issues involve social and economic questions, but many are fundamentally physical problems.

The park is isolated in the midst of traffic lanes, hedged in by ramps leading into the garage below. It is the Sponsor's hope that the new design for the park, including the surrounding streets and sidewalks, and the possibility of a proposed reconfiguration of the garage ramps will remedy this.

There is presently a lack of comfortable seating and shade in which to enjoy a brown bag lunch on a sunny day. The pedestrian ways and the garage entrances are generally uninviting and there are not adequate provisions for bus stops. The restrooms are not perceived to be secure. Lighting is minimal and thus contributes to a feeling of being unsafe. Both a reality and perception of criminal activity have led to the park's diminished use. An unsavory overall appearance is evident despite conscientious fulltime efforts by the Department of Recreation and Parks to maintain the park landscape, particularly the large turf areas which need constant attention. Due to the absence of physical facilities, performance space, sound equipment and servicing to the square, events are difficult to host.

Perhaps most importantly, the park lacks the identity that we demand of our downtown centerpiece. Pershing Square is of critical importance to Los Angeles. In addition to being our oldest public square, it is the only large public open space in a densely populated downtown. Some of the finest examples of early 20th century California architecture are adjacent to the square; the Biltmore Hotel, Oviatt Building, Heron Building, Title Guarantee Building, Subway Terminal Building and Pacific Mutual Building.

Today the square the central open space in a thriving metropolis, with \$10 billion of new private investment surrounding it downtown. This has brought over half a million new workers to the central city. New and renovated housing in the downtown has brought in many new residents, including elderly and "yuppies". Broadway, one block away, is the thriving main street of the Hispanic community in the city. There are many homeless and low-income tenants in downtown, concentrated primarily in the "Skid Row" area east of the square. They too have been discouraged from using the park by its lack of amenities and the presence of drug dealing, mugging and other criminal activity.

The downtown workers, residents and visitors are potential users of the new Pershing Square and many have told us that they want, and deserve, a park that is safe, that is clean, that is green and that entertains. This redevelopment effort seeks to resolve the issues outlined here and create a central park that reflects the international city that Los Angeles has grown to be.

C. Goals and Objectives

As a first step to revitalizing Pershing Square, the Pershing Square Management Association, Department of Recreation & Parks and Community Redevelopment Agency developed and formally adopted the following Goals and Objectives to guide the redevelopment effort.

1. To establish Pershing Square as an important symbol of the center of Los Angeles, while maintaining and improving its character as a park.
 - a. Create a premier open space that will capture the imagination and interest of the populations of downtown Los Angeles.
 - b. Maintain and augment the physical and visual relief the park offers to the downtown built environment.
 - c. Upgrade the image of the Square.
 - d. Recognize that the square includes the surrounding streets, sidewalks and ground floor activities.
 - e. Establish Pershing Square as a continuing high

priority commitment for both the public and private sectors.

- f. Promote the historical importance of the Square.
- 2. To establish Pershing Square as a social and cultural activity center for Los Angeles.
 - a. Involve Los Angeles' diverse social, cultural and ethnic populations in the activities of Pershing Square.
 - b. Provide for expanded active and passive activities and amenities for both day and evening hours.
 - c. Create a strong, coherent image and theme for the Square.
- 3. To create an urban park that is regularly used by all groups and individuals in Los Angeles.
 - a. Establish a safe atmosphere where people feel comfortable in the Square.
 - b. Improve the maintenance and cleanliness of the square, making it a pleasant, attractive environment for many activities.
 - c. Create an opportunity to build a sense of community ownership of the park.
 - d. Encourage ongoing broad public input & participation in the use, programming and development of the park.
- 4. To relate Pershing Square to other downtown activities in a mutually reinforcing manner.
 - a. Encourage surrounding development to relate to the square.
 - b. Enhance linkages between other downtown open space and cultural amenities.
 - c. Plan activities and uses which are complimentary to and reinforce other nearby activities.
- 5. Provide for efficient revitalization, operation, management, maintenance and security.

- a. Insure that sufficient resources are available for revitalization, operation, management, maintenance and security.
- b. Promote the City's goals of equal opportunity, affirmative action and fair contract solicitation.
- c. Establish a clear, orderly process to meet these goals and objectives in a timely manner.
- d. Develop a long-term revitalization plan that is financable and sustainable.

F. Design Guidelines and Facility Requirements

As a result of a carefully orchestrated, and wide reaching community input process involving a broad cross-section of the public, the following design guidelines have been developed and adopted by the Pershing Square Management Association with the cooperation of Department of Recreation & Parks and Community Redeveloping Agency.

Image

Pershing Square should be a response to the much felt need downtown for physical and visual relief within the hardscape of Downtown. Its lush green botanical landscape should become its greatest attraction. The new park should be designed in a manner that celebrates the beauty and educational benefits of a botanical exposition. The uniqueness of the park's landscape will give it the ability to stand out as distinctly different from other public spaces in Downtown. It should be designed in such a manner to address the goals and objectives of creating a secure, active civic center.

Character

The character of Pershing Square should be that of a

historic park. It should celebrate the longevity and tradition of Pershing Square's role as the "town square" and premier open space Downtown. It should highlight the pride of Los Angelenos in the city's heritage and increase the visitors awareness of the city's evolution from a Spanish pueblo to its role as the center of the Pacific Rim nations.

Name

As noted earlier, the name of the square has changed many times in the park's history. Competitors may make recommendations for a new name for the park to reflect its new role in Los Angeles. Sponsor is willing to work with the Los Angeles Department of Recreation & Parks Commission to change the name.

Major Features

The major attraction of Pershing Square should be its planting and the relief it offers from the hard edges of the built form. Plant life, then, should be its first major feature. The additional program elements are intended to support the desired uses of the park. The planting should serve as a backdrop defining vistas, circulation and activity areas. The plant material should ensure the presence of seasonal colors and greenery. Due to maintenance requirements, there should be no turf unless it is isolated from actual public use. The park should be designed to utilize other types of plant material and ground cover to create an attractive landscaped setting, botanical in quality.

1. Performance Area

- A new amenity should be an open performance area to encourage a variety of changing activities. This flexible space should provide a setting for celebrations ranging from noontime concerts to major festivals and should accommodate average of 500 people. Flexible seating and appropriate storage is required. Temporary street closures can be considered to accommodate the audience for occasional major events. A stage should be designed to permit covering on days when shade or rain protection is desirable.
- Design proposals should address the fact that there will not be continuous performances and the space should not appear empty during those times. Rather, it should be designed to encourage casual, unprogrammed use.

- An open air cafe seating approximately 200 should be located near the performance area, to allow visitors to enjoy entertainment tableside.

2. Greenhouse/Crystal Palace

- There should be an elegant, lightweight structure to house a restaurant, kitchen and service area, and seating for 200-500 people, and to display exotic plants and flowers.

Additional Amenities

- Water features may be desired as a focal point or as accents to animate special areas of the square.
- Amenities, such as newsstands, flower stalls and refreshment stands, should be strategically located throughout the park to activate entrances and act as magnets to draw people into the park.
- Metro Rail Entrance Portal which may, in the future, be located at the Fifth and Hill corner of the park.
- Bus shelters or other provisions for waiting commuters should be provided at bus stops.
- Park lighting should include illumination for surrounding streets, sidewalks, transit stops and pedestrian garage entrances.
- State-of-the-art decorative and artistic lighting, such as lasers, as well as illumination of building facades might be considered.

The emphasis of the redesign of Pershing Square is that of a total and comprehensive redevelopment. New paving, seating, water fountains, trash receptacles, light standards and information kiosks, etc., should be part of design proposals.

Program Areas Guidelines

Performance Area

- Stage Area
- Audience Area
Approximately 500 people per performance, flexible seating

Open Air Cafe

- Kitchen and Service Area
- Storage (for Tables and Chairs)
- Seating Area for 200 People

Crystal Palace/Indoor Restaurant

- Planted Area
 - Restaurant
 - Kitchen
 - Restaurant Seating for 250-500 People
- (Note: Assume separate concessionaires for the cafe and restaurant.)

Administration and Maintenance Area

- Staff Offices for 3

Security Station

- General office

Kiosks/Stalls

- For selling flowers, magazines, hotdogs, etc.
- Approximately 10 kiosks averaging 50 sq. ft. each, excluding canopies, umbrellas, etc.

G. Functional Issues

The design of the Square should primarily promote informal use, and only secondarily depend upon formally programmed events for animation. The Square should be a place where people passing through might stop casually to sit, read, eat, look at the plants, chat and relax. It should seek to attract as its primary users the downtown office workers, the Latino shoppers on Broadway, and the residents of the central city - the elderly, the "yuppies", and the lower income tenants.

Seating

People should be offered a variety of places and types of seating. There should be places to sit:

- Alone or with a friend
- Physically but not visually removed from the flow of pedestrian traffic
- Around tables
- Which encourage social interaction
- That provide a natural audience for street performers

Pedestrian Circulation

- The design for the new park should offer an easy pedestrian flow from the surrounding sidewalks, having entrances and exits to the Square carefully defined at corners and mid-block pedestrian crossings.
- Provide a pedestrian route to the area of the proposed metro rail portal.
- Consider perimeter walks and circulation across the Square.

Security

- Design proposals should reflect a concern for personal safety. Lighting, visibility, and defensible space criteria, i.e. the "presence of eyes and ears on the park" is of critical importance.
- Pershing Square should have a safe and attractive feeling at night. Lighting should be warm and inviting, drawing people into the park and extending its hours of activity.
- Light levels should vary for special effects, but should convey a general feeling of safety. The design of lighting standards and luminaries should be respectful of the overall design concept.
- Visibility across the square should be a consideration. Planting, for the most part, might be kept above the head or below the knees allowing clear sight lines across the park and permitting natural surveillance.

Storage

Provide storage space for:

- Portable stage equipment
- Moveable chairs
- Maintenance equipment
- Lighting and electrical control
- Telephone equipment

Vehicular Access

Truck access may be required for food service delivery, fire vehicle access, and waste pick up. Truck access may also be needed for the performance area, although not on a daily basis.

Transit Shelters

Pershing Square is important as a transit hub. New bus shelters and should harmonize in style and scale with the rest of the park. This criteria will also apply to any future metro rail entrance portal. Handicapped Accessibility is required.

**APPENDIX III. State and Local Regulations on Lease of Public Park
Land: Comparison of Four States**

CALIFORNIA

1. Are Leases Permitted by Statute?

Yes. The State Department of Parks and Recreation may enter into contracts with such persons or companies to construct, maintain and operate concessions in State Park areas for the safety and convenience of the general public in the use and enjoyment of the State Park System. The municipalities in California also enjoy this right.

2. Lease Length

Negotiable -- some existing leases are for 40 years. The City of Anaheim has entered into a 10-year lease for a \$150,000 Skatepark and a 20-year lease on a tennis complex. Copies of these leases can be found in the Appendix. La Habra has also leased a portion of a Public Park for a privately built, public tennis complex.

3. Lease Restrictions

The State or municipality has rights to approve construction plans, rights to inspect premises on performance during the lease period to see that facilities are kept safe, clean and in good repair, etc.

4. Opinions For or Against

The State had 141 concession agreements in force in Fiscal 1975-1976. These returned gross revenue of more than \$12.5 million. The State received in excess of \$800,000. It is obvious they favor this system. A City of Anaheim spokesman states, "Both the tennis complex and the skateboard park which were developed under land-lease agreements between the City of Anaheim and private have been very successful projects, but one of the reasons for our success is the fact that every responsibility was well defined in the lease agreements (which are enclosed). The key to the success of projects of this nature is to take your time in preparing the lease and make sure every question is answered before the deal is completed."

In 1965, the State Department of Finance conducted a management survey of the use of private capital in developing the California State Park System. The study concluded that private capital should be encouraged to develop needed facilities in some State Parks.

MASSACHUSETTS

1. Are Leases Permitted by Statute?

Yes, but only by specific acts of the state legislature with a favorable two-thirds vote of both branches.

2. Lease Length

The length of the lease varies for each individual instance.

3. Lease Restrictions

Vary according to the individual instance.

4. Opinions For or Against

None given.

NEW YORK

1. Are Leases Permitted by Statute?

Yes.

2. Lease Length

State — five years. This can be extended to 10 years if there is a proven need by the nature of the required investment. The state is currently considering the lease of a state-owned ski area to private enterprise. Municipal — unknown. However, the City of New York recently entered into a 15-year lease with the U.S. Lawn Tennis Association for a tennis complex.

3. Lease Restrictions

None given.

4. Opinions For or Against

None given.

OREGON

1. Are Leases Permitted by Statute?

Oregon has a statutory provision which deals with the transfer or lease of real property owned or controlled by the state or any of its political subdivisions.

This provision provides that: Whenever the state or any political subdivision thereof possesses or controls real property not needed for public use, or whenever the public interest may be furthered, the state or political subdivision may sell, exchange, convey or lease for any period not exceeding 99 years all or any part of their interest in the property to or with the state or any political subdivision of the state or the United States of America or any agency thereof or private individual or corporation. The consideration for the transfer or lease may be cash or real property, or both." ORS 271.310(1). (Emphasis added)

3. Lease Length

Negotiable up to 99 years. There are currently no long term leases. There are a limited number of short term concessions with facilities provided by the state.

4. Lease Restrictions

Yes, including lease opportunity being offered through public bidding.

5. Opinions For or Against

This is a "good approach to management which Oregon may consider in the near future."

(Source: Private Financing in Public Parks, Steward E. Allen, 1979.)

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